SUPREME COURT OF THE UNITED STATES.

No. ~~209~~. 196.

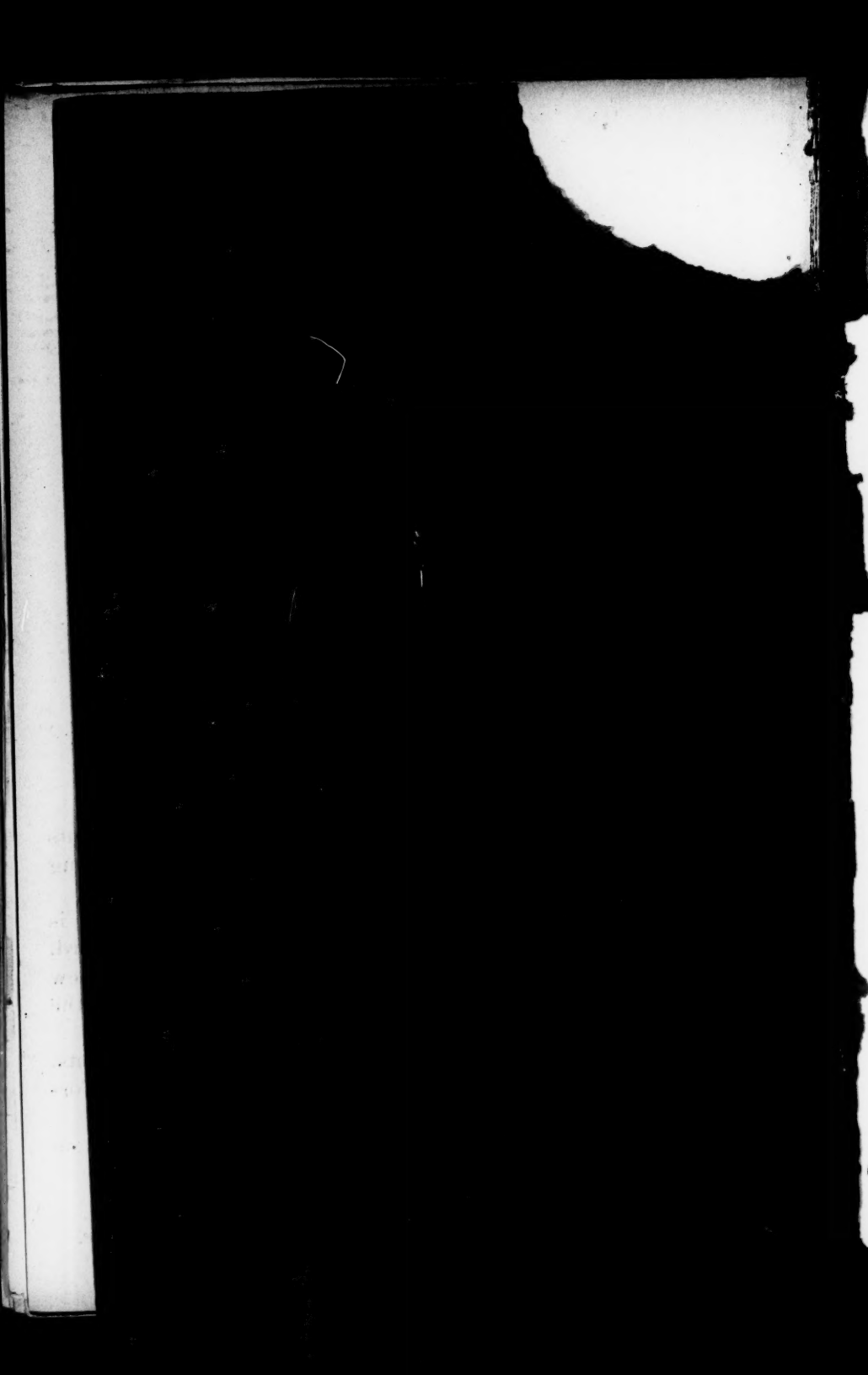
WILLIAM F. JOHNSON AND THOMAS P. ACKERS, COMPLAINANTS AND APPELLANTS,

vs.

BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

GOVERNMENT PRINTING OFFICE.



1683

SUPREME COURT OF THE UNITED STATES.

No. 309.

WILLIAM F. JOHNSON AND THOMAS P. ACKERS, COMPLAINANTS AND APPELLANTS,

vs.

BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the circuit court of the United States of America within and for the northern district of Illinois, in chancery sitting, at the city of Chicago, in the district aforesaid, before the Hon. Francis Drummond, judge of the district court of the United States for the northern district of Illinois, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States of America, sole judge of said circuit court, on Friday, the fifteenth day of April, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-eighth year.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

WILLIAM F. JOHNSON AND THOMAS P. AKERS
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON. } Chancery.

2 Be it remembered, that on the twenty-seventh day of December, in the year of our Lord one thousand eight hundred and sixty-two, William F. Johnson, complainant, by his solicitors, Mess. Merrick and McKinnon, came into the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, and filed his bill of complaint against Benjamin F. Carver, James Clapp, and William Ruxton, defendants, and also at the same time filed his bonds for costs in said entitled cause, which said bonds for costs and also said bill of complaint are in the words and figures following, to wit:

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

Circuit court, December term, A. D. 1862.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER AND OTHERS. } In chancery.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any
3 of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by me, and hereby agree and stipulate that execution may issue against my property for any costs taxed against me.

Dated this 27th day of December, A. D. 1862.

JOHN J. McKINNON.

Endorsed: Filed Dec. 27th A. D. 1862.

WM. H. BRADLEY, *Clerk.*

United States circuit court for the northern district of Ill.

WM. F. JOHNSON
vs.
B. F. CARVER *et al.*

I hereby enter myself as security for costs in the above-entitled cause.

R. T. MERRICK.

Chicago, Dec. 27th, 1862.

Endorsed: Filed Dec. 27, 1862.

WM. H. BRADLEY, *Clk.*

4 UNITED STATES OF AMERICA:

In the circuit court of the United States for the eighth circuit and northern district of Illinois, sitting in chancery.

To the judges of the circuit court of the United States for the eighth circuit and northern district of Illinois:

Your orator, William F. Johnson, who is a citizen of the State of Connecticut, brings this his bill against Benjamin F. Carver, James Clapp, and William Ruxton, who are citizens of the State of Illinois, residing in the district aforesaid.

And thereupon your orator complains and says that heretofore, on or about the thirtieth day of April, A. D. 1860, at Chicago, in said district, your orator made and delivered to said defendant, Benjamin F. Carver, then a banker and trader in said city, his certain promissory note in writing, bearing date said day and year, for the sum of five thousand dollars, payable to the order of said Carver one year after date thereof, with interest at and after the rate of ten per cent. per annum; and the better to secure the payment of the sum of money in said promissory note mentioned your orator, on or about the thirtieth day of April, A. D. 1860, at Chicago, in the dis-
5 trict aforesaid, also made, executed, and delivered to said defendant, James Clapp, as trustee, his wife, Eliza Johnson, joining with him therein, a deed of trust on certain premises lying and being in the county of Cook, in said district, and described as follows, namely: All that part of the southeast fractional ¼ of section twenty-seven, (27,) township thirty-nine (39) north, of range fourteen (14) east of the 3rd p. m., beginning on the south line of said tract 14 76-100 chains east of the southeast corner thereof; thence running north 16½° west, 5 50-100 chains; thence east, parallel with the south line of said quarter section, 10 45½-100 chains, more or less, to Lake Michigan; thence southerly along Lake Michigan to the south line aforesaid; thence westerly to the place of beginning, containing 5 53-100 acres, being the same land conveyed to the said Johnson by William F. Myrick, by instrument dated May 24, 1851, and recorded in the recorder's office of Cook County, Illinois, in Book 46, on page 75. Also the northwest quarter (¼) of northwest quarter (¼) of section one, (1,) township thirty-nine (39) north, of range thirteen (13) east of third principal meridian, also in Cook County, Illinois, with all buildings and improvements now
6 on or which may be hereafter placed on said premises, conditioned to be void on the payment of said promissory note and interest according to the tenor and effect thereof, and which deed of trust was afterwards, on the twenty-first day of May, A. D. 1860, filed for record and recorded in the office of the recorder of deeds in said county of Cook, in Book one hundred and ninety-eight, at page 162, as will more fully appear from the certified copy thereof hereto attached marked Exhibit "A," and which he prays to be made and taken as a part of this his bill.

And your orator further showeth that, in consideration of the said note by him so made and delivered, the said Benjamin F. Carver, on the day your orator made said note to him at Chicago, in the district aforesaid, delivered to your orator a certain bank-book, being the same or such a book as is commonly given by bankers and banking institutions to their depositors, in which said bank-book the said Benjamin F. Carver, then and there gave your orator credit, as of the twenty-sixth day of April, A. D. 1860, for the amount of said note, less the sum of five hundred dollars discounted therefrom, and therein and thereby stated and acknowledged that your orator
7 then had on deposit and subject to his draft or order with him, the said Carver, the sum of forty-five hundred dollars.

And your orator further showeth that on or about the eleventh day of June,

A. D. 1860, he deposited in cash with said defendant, Benjamin F. Carver, the further sum of ten thousand two hundred and forty-five dollars, for which said sum of money the said Carver also gave your orator credit in said bank-book, therein and thereby stating and acknowledging the receipt and deposit of said sum of money, subject to the draft or order of your orator.

And your orator further showeth that after he received said bank-book from said defendant, Benjamin F. Carver, and made the deposits aforesaid, he did, on several days and times up to and on the twenty-second day of July, A. D. 1860, check, draw order on, and receive from said Benjamin F. Carver divers sums of money, amounting in all to the sum of ninety-four hundred and sixty-two 84-100 dollars, and no other or further sum or sums, leaving a balance of fifty-two hundred and eighty-two 16-100 dollars still on deposit to the credit of your orator with said Carver.

8 And your orator further showeth that on or about the twenty-third day of July, A. D. 1860, he went to Denver City, commonly known as Pike's Peak, in the then Territory of Kansas, and did not return to said city of Chicago until some time in the month of , A. D. 1861; and that after the said twenty-second day of July, A. D. 1860, he neither received of or from said Benjamin F. Carver or any one else, and never has received of or from said Benjamin F. Carver or any one else, the said sum or balance of fifty-two hundred and eighty-two 16-100 dollars, or any part thereof, on deposit to his credit with said Carver as aforesaid, and that he has never made any orders, drafts, checks, or drawn, or caused to be drawn, any bills of exchange on said Benjamin F. Carver for the said balance of fifty-two hundred and eighty-two 16-100 doll's, or any part thereof; and that no person or persons had or has any authority or power from him, of any nature or kind, to check, order, draw on, or receive the said balance, or any part thereof, for him or otherwise, and that the same is now actually and equitably due and owing from said Benjamin F. Carver to your orator, as will be hereinafter more fully stated.

And your orator further showeth that, at the time he went to Denver City aforesaid, and down to and until a very late day, he had and reposed the

9 most implicit confidence and reliance in the integrity, honesty, and truthfulness of said defendants, Benjamin F. Carver and James Clapp, and that, so reposing and placing his confidence in said Carver, he gave and delivered his said bank-book, with other valuable papers, to said Benjamin F. Carver for safe-keeping during his absence, and to be returned to him when called for.

And your orator further showeth that, soon after returning from Denver City aforesaid, he called on said Benjamin F. Carver, at his office, then in the Marine Bank building, in said city of Chicago, for the purpose of receiving from said Carver the bank-book aforesaid, and the further purpose and view of paying off and discharging his said promissory note and deed of trust, and did then and there request said Benjamin F. Carver to deliver up to him the said bank-book, and then and there also stated to said Carver that he called for the purpose of receiving the same, and to ascertain the exact balance to his credit, and pay off and discharge the said note and deed of trust with the balance so to his credit on said bank-book, and due and owing him by said Carver.

And your orator further showeth that said Benjamin F. Carver, at the

10 time and place last aforesaid, wholly disregarding the truth, knowingly falsely and fraudulently stated, pretended, claimed, and insisted, to the very great astonishment, annoyance, and wrong of your orator, that he, said Benjamin F. Carver, never had said bank-book, and that he never gave or delivered a bank-book to your orator at all, and that he, said

Benjamin F. Carver, did not then owe and was not indebted to your orator in any sum of money whatever. And the said Benjamin F. Carver, then and there further disregarding the truth, knowingly falsely and fraudulently stated, pretended, claimed, and insisted that he did not, on the day your orator made said note, or on the said twenty-sixth day of April, A. D. 1860, or on any other day or time, deliver to your orator the said bank-book, and that he did not credit your orator in said bank-book with the said note, less a discount of five hundred dollars, and that there was no credit of four thousand five hundred dollars to your orator in said bank-book for said note, and that said bank-book did not show and acknowledge that, on the said twenty-sixth day of April, A. D. 1860, your orator had on deposit to his credit with him, said Benjamin F. Carver, the said sum of forty-five hundred dollars. And the said Benjamin F. Carver, then and there further disregarding the truth, knowingly falsely and fraudulently stated, pretended, claimed,

11 and insisted that he, said Benjamin F. Carver, on the said twenty-sixth day of April, A. D. 1860, discounted the said note of five thousand dollars, and then and there paid over and delivered to your orator the sum of forty-five hundred dollars in cash, being the amount of said note less the sum of five hundred dollars discounted therefrom, and that your orator then and there received the said sum of forty-five hundred dollars in cash, and did not deposit or leave the same, or any part thereof, with him, said Benjamin F. Carver; all of which statements, representations, claims, and pretences by the said Benjamin F. Carver as aforesaid made, your orator charges were false and fraudulent, and that the same were so made by the said Benjamin F. Carver with the view and intent to cheat, swindle, and defraud your orator out of the said sum of fifty-two hundred and eighty-two 16-100 dollars and the premises hereinbefore and hereinafter described.

And your orator further showeth that, owing to and on account of the great and implicit confidence and reliance which your orator had and reposed in said Benjamin F. Carver for truth, integrity, and fair dealing, he was deceived, and induced by said false and fraudulent statements, representations,

12 claims, and pretences of said Benjamin F. Carver, to him so made as aforesaid, to believe, and did believe himself mistaken as to the fact that he had left said bank-book with said Benjamin F. Carver, and as to the fact that the said bank-book contained and showed that on the said 26th day of April, A. D. 1860, said Benjamin F. Carver gave him credit therein for the sum of $4,500, as the amount of said promissory note less the sum of five hundred dollars discounted therefrom, and also as to the fact that he, said Benjamin F. Carver, was then justly indebted to and owing your orator the said sum of $5,282 16. And your orator saith that he was thereby further deceived, induced, and led to believe that he had received of and from said Benjamin F. Carver the said sum of $4,500, in cash, as the amount of said note, less the discount aforesaid, and as represented, claimed, and pretended by said Benjamin F. Carver. And your orator was then and there also further induced and led to believe that he had lost or mislaid his said bank-book, and being so induced, deceived, and led to mistake the real facts by the said false and fraudulent statements, representations, claims, and pretences of said Benjamin F. Carver, and the said Benjamin F. Carver then also having stated and represented to your orator that he, said

13 Benjamin F. Carver, was still the owner and possessed of your orator's said promissory note of $5,000, and your orator being at that time unable to pay the said promissory note, then soon maturing, without great loss and sacrifice, your orator, at the instance of said Benjamin F. Carver, agreed to make a deed to said Benjamin F. Carver for the premises in said deed of trust described, together with some other lands, and receive in payment therefor his said promissory note of $5,000, and the further sum of $4,000.

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And your orator further showeth that, relying upon and believing the said false and fraudulent statements of said Benjamin F. Carver to be true, and relying upon and believing that the said Benjamin F. Carver then still was the owner and possessed of your orator's said promissory note, your orator, on the 23d day of March, A. D. 1861, at Chicago, in said district, his wife, Eliza Johnson, joining with him, made, executed, and delivered to said Benjamin F. Carver a deed for the following described premises, lying and being in the said county of Cook and district aforesaid, namely: The undivided one half of the southwest quarter of section twenty-nine, in township thirty-nine north, of range 13 east of 3rd p. m.; also a part of the southeast fractional quarter of section twenty-seven, township 39 north, of range 14 east, beginning on the south line of said quarter section 14 chains and 70 links east from the southwest corner of said quarter section, and running
14 thence north sixteen and a half degrees west, five chains and a half; thence east, parallel with the south line of said quarter section, ten chains and forty-five and a half links, more or less, to Lake Michigan; thence south, by and along said lake, to the south line of said quarter section; thence west to the place of beginning; saving and excepting the portion of land sold to the Illinois Central Railroad Company. Also the northwest quarter of the northwest quarter of section one, in township 39 north, of range 13 east of 3rd p. m." Which said deed was was afterwards, on the 22d day of April, A. D. 1861, recorded in the office of the recorder of deeds for said county of Cook, in Book 212, at page 372, as will more fully appear, reference being thereunto had, and to which record, or a certified copy thereof, your orator prays leave to refer.

And your orator further showeth that in said deed there is no consideration expressed, but that the same was made, executed, and delivered by your orator to said Benjamin F. Carver, in pursuance of your orator's said agreement to make the same for his said note of $5,000, and the said further sum of $4,000, and while your orator was laboring under mistake as to the facts hereinbefore stated, and relying upon and believing the said false and fraudulent statements, representations, claims, and pretences of the
15 said Benjamin F. Carver to be truthful and honest; and your orator avers that he never would have made said deed or agreed to make it, or sold said premises or agreed to have sold the same, had he known the real facts in relation to his said bank-book and the liability of said Carver to him, &c.

And your orator further showeth that the premises in said deed described are very valuable, and were at the time your orator made said deed to said Benjamin F. Carver well worth the sum of twenty thousand dollars and upwards, and that your orator has received from said Benjamin F. Carver the sum of $2,000, [which sum of two thousand dollars was received on a check drawn by said Carver on the defendant Ruxton on or about the 9th day of December, 1862, payable some ten days thereafter, and which check was paid to your orator by the said Ruxton on or about the 15th of December, 1862, and which by the check now in the possession or power of said Ruxton, and which your orator calls upon said Ruxton to produce at the hearing,*] will appear; and the other two thousand dollars mentioned as the balance to be arranged by defendant Ruxton has never been paid on said deed, and
16 the balance of said four thousand dollars was arranged to be paid your orator by said defendant Ruxton.

And your orator further showeth that soon after he made said deed to said Benjamin F. Carver he again went to Denver City, and did not return there-

* Amendment filed by leave of the court and by consent of the defendants March 11, 1864.

from until the month of November, A. D. 1862, when he again met said Benjamin F. Carver at Chicago aforesaid; that said Carver then informed your orator that there was a mistake in the said last-named deed not expressing consideration on its face, and requested your orator to rectify the same by giving a quitclaim deed to the defendant James Clapp; that he, said Carver, during the absence of your orator, had become embarrassed in business, and in order to protect his property from being sold on executions by his creditors had placed it in the hands of his attorney, the defendant James Clapp, and that the deed which he so requested your orator to make to said defendant Clapp would be for his benefit and use of him, said Benjamin F. Carver.

And your orator further showeth that during all the time he was at Denver City aforesaid he continued to correspond and do business with said Benjamin F. Carver, and with B. F. Carver & Co., a firm composed of
17 said Benjamin F. Carver and Billings; that he remitted the said firm of B. F Carver & Co. large quantities of gold bullion to sell for him and apply on business transactions he had with them; and that still having the utmost and unbounded confidence in the said Benjamin F. Carver and said James Clapp for honesty, truthfulness, and integrity, your orator, on the 9th day of December, A. D. 1862, at the request and earnest solicitation of the said defendants Benjamin F. Carver and James Clapp, and upon the further assurances, statements, and representations of said Carver and Clapp as to the fairness of the transactions of the said Benjamin F. Carver with your orator hereinbefore stated, your orator consented, his wife, the said Eliza Johnson, joining with him, and then and there, for the nominal consideration of one dollar, made, executed, and delivered to said defendant James Clapp a quitclaim deed for the premises last hereinbefore described, which deed was afterwards, on the 17th day of December, A. D. 1862, filed for record in the office of the recorder of deeds for said county of Cook, as will more fully appear by the docketing thereof, No. 60508, in the office of said recorder, reference being thereunto had, and to which and the record of said deed, or a certified copy thereof, your orator prays leave to
18 refer.

And your orator further showeth that the said James Clapp was, by agreement between your orator and the said James Clapp and Benjamin F. Carver, to hold said deed as an escrow and as a security to your orator for the payment of said sum of two thousand part of said four thousand dollars agreed to be paid him by the said defendant William Ruxton.

And your orator, upon his information and belief, further showeth, and charges the fact so to be, that after the making of said last-named deed the said Benjamin F. Carver, James Clapp, and William Ruxton, having combined and confederated together the better how to cheat and defraud your orator out of his hard-earned property, the premises described in said last-named deed, and place the same, if possible, beyond the reach and power of a court of equity, the said William Ruxton informed your orator that he, said William Ruxton, would not pay your orator the said sum of two thousand dollars when due, unless your orator would then agree and consent for said James Clapp to make him, said Ruxton, a deed for a part of said premises, and that the said Benjamin F. Carver was insolvent and unable to pay, and that your orator could not collect the same of him, said William Ruxton, by law.

19 And your orator, upon his information and belief, further showeth, and so charges the fact to be, that on or about the 15th day of December, A. D. 1862, the said defendant James Clapp, in violation of the trust reposed in him by your orator, and contrary to equity and good conscience, made, executed, and delivered to said defendant William Ruxton a

deed for a portion of the premises so as aforesaid quitclaimed him by your orator and described as follows: All that part of the southeast fractional ¼ of section twenty-seven, (27,) township thirty-nine (39) north, of range fourteen (14) east of the 3rd p. m., beginning on the south line of said tract 14 76-100 chains east of the southwest corner thereof; thence running north 16½° west, 5 50-100 chains; thence east, parallel with the south line of said quarter section, 10 45½-100 chains, more or less, to Lake Michigan; thence southerly along Lake Michigan to the south line aforesaid; thence westerly to the place of beginning; containing 5 53-100 acres, being the same land conveyed by the said Johnson to William F. Myrrick by instrument dated May 24th, 1851, and recorded in the recorder's office of Cook County, Illinois, in Book 46, on page 75; which deed was afterwards, on the said
20 17th day of December, A. D. 1862, filed for record in the office of the recorder of deeds for said county of Cook, as will more fully appear by the docket, No. 60,526, thereof in the office of said recorder, reference being thereunto had, and to the record of which deed, or a certified copy thereof, your orator prays leave to refer.

And your orator further showeth that after being informed by said William Ruxton and by said James Clapp that he, said Ruxton, would not pay your orator the said two thousand dollars unless your orator would consent to the making of said last-named deed, and your orator having applied to said defendant, Benjamin F. Carver, in relation to the payment of said sum of money, and being unable to receive any satisfactory information from said Carver in relation thereto, your orator began to doubt the honesty, truthfulness, and integrity of said Benjamin F. Carver, James Clapp, and William Ruxton, and also began to doubt the truthfulness of the statements of said Benjamin F. Carver in relation to the said bank-book of your orator; and thereupon your orator called on Billings, esq., of said city of Chicago, and who was lately the copartner of said Benjamin F. Carver
21 in the business of banking, and your orator then and there stated his fears to said Billings, and then and there requested said Billings to search in his vault, and among the books and papers of said Carver, for said bank-book; that said Billings did make search for said bank-book, and in a few minutes found it among some other bank-books or papers left there by said Carver, and the said Billings then and there handed the said bank-book to your orator.

And your orator further showeth that upon a reference to said bank-book he finds that said Benjamin F. Carver gave him credit therein, on the said 26th day of April, A. D. 1860, for the sum of $4,500 as the amount of your orator's said note, less the sum of $500 discounted therefrom, and that on the 11th day of June, A. D. 1860, said Benjamin F. Carver also gave your orator credit in said bank-book for the sum of $10,245 for cash deposited with said Carver by your orator, and that the whole amount of the several sums checked and drawn out by your orator from said Benjamin F. Carver, of the amounts so deposited with him, and with which your orator is credited in said bank-book, is $9,462 84, and that on the 22d day of July, A.
22 D. 1860, as shown by said bank-book, now in possession of your orator, the balance due and still due your orator by said Carver was and is the sum of $5,282 16, aforesaid, with interest since that time.

And your orator further showeth, upon his information and belief, and so charges the fact to be, that the said Benjamin F. Carver was not, on the said 23d day of March, A. D. 1861, as by him to your orator represented, the owner and possessed of the said note of $5,000 made and secured by your orator as aforesaid; but, on the contrary thereof, that the said Benjamin F. Carver had long before that time sold and transferred the said note and security to one Greene, whom your orator is informed is a citizen and resi-

dent of the State of New Jersey, and who is still the owner thereof, and that the said defendants Benjamin F. Carver and James Clapp well knew that such was the fact when, on the said 23d of March, A. D. 1861, they and each of them falsely and fraudulently represented and stated to your orator that the said note and deed of trust was still the property of the said Benjamin F. Carver.

And your orator further showeth that by means of his too great confi-
23 dence and reliance in the said Benjamin F. Carver and said James Clapp for honesty, truthfulness, and fair dealing, and by means of the said false and fraudulent acts, statements, representations, claims, and pretences, and of the deceptions practiced on him by said defendants Carver and Clapp, with the intent and view to cheat and defraud your orator out of his money and property aforesaid, your orator is now liable and bound to pay the said note of $5,000, and interest thereon, to said Greene, or have his property sold and sacrificed by a sale under said deed of trust, while the legal title to his real estate aforesaid is now vested in the said James Clapp and William Ruxton.

And your orator further showeth, upon his information and belief, and so charges the fact to be, that said James Clapp and said William Ruxton had full knowledge, notice, and information, and aided and abetted and assisted the said Benjamin F. Carver in perpetrating on your orator the false, fraudulent, and unconscionable acts herein before stated and set forth, and that so it will appear if the said defendants and each of them will well and truly answer and set forth, according to the best of their knowledge,
24 remembrance, information, and belief, all and everything they know in relation to the matters and things hereinbefore stated and charged. And your orator well hoped that the said defendants Benjamin F. Carver, James Clapp, and William Ruxton would not have taken advantage of the confidence reposed in them by your orator as aforesaid, and would not have set up and made the aforesaid many false and fraudulent statements, claims, and pretences by your orator against them charged. All of which actings and doings are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

But now so it is, may it please your honor, that the said defendants Benjamin F. Carver, James Clapp, and William Ruxton, combining and confederating together and with divers other persons to your orator at present unknown, but whose names when discovered your orator prays may be inserted herein with proper and apt words to charge them, and contriving to injure and defraud your orator in the premises, and now refuse and neglect to pay your orator the balance still due and owing him by said defendant Benjamin F. Carver, and refuse to deed and reconvey to your orator his lands and premises hereinbefore described, and the legal title to which is now
25 vested in the said defendants James Clapp and William Ruxton.

In tender consideration thereof, and forasmuch as your orator is remediless in the premises at and by the direct and strict rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and a similar nature are properly cognizable and relievable, to the end, therefore, that the said defendants Benjamin F. Carver, James Clapp, and William Ruxton may, if they can, show why your orator ought not to have the relief prayed for, and according to the best of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated and charged, (their answers on oath being hereby respectively expressly waived and not required;) and your orator therefore prays that your honor, upon a final hearing of this cause, will decree that the several conveyances by your orator to the said defendants Ben-

jamin F. Carver and James Clapp made, and the conveyance by said James Clapp to the said defendant William Ruxton made, are void, and that the same were procured and brought about by the fraud and collusion of said defendants, and that your honor will further decree that the premises so conveyed by your orator to said defendants Clapp and Carver, and
26 the premises conveyed by said Clapp to said Ruxton, are all now held in trust by said Benjamin F. Carver, James Clapp, and William Ruxton for your orator, and that they and each of them, at some short day to be named by your honor, reassign and transfer to your orator all their right, title, and interest in and to the lands and premises heretofore by your orator in mistake deeded to the said Benjamin F. Carver and James Clapp, and by the said James Clapp, in fraud and by collusion, deeded to the said William Ruxton; and that the said Benjamin F. Carver, and the said James Clapp, as his assignee or trustee, account to your orator for the balance that may be found due and owing your orator from said Benjamin F. Carver as aforesaid; and that the said defendants Benjamin F. Carver and James Clapp may be prohibited from making any assignment, conveyance, or transfer of the property heretofore deeded to them by your orator as aforesaid, and that the said defendant William Ruxton may also in like manner be prohibited from making any assignment, conveyance, or transfer of the property hereinbefore described as deeded to him by said James Clapp; and that you orator may have such further or other relief in the premises as the nature of his case shall require, and as shall be agreeable to equity and good
27 conscience. May it please your honor to grant unto your orator the people's writ of injunction, issuing out of and under the seal of this honorable court, to be directed to the said defendant Benjamin F. Carver, James Clapp, and William Ruxton, and to their counsellors, attorneys, solicitors, trustees, and agents, therein and thereby commanding and strictly enjoining the said defendant, and the persons before mentioned, in manner aforesaid. And may it please your honor to grant unto your orator the people's writ of subpœna, issuing out of and under the seal of this honorable court, to be directed to the said defendants Benjamin F. Carver, James Clapp, and William Ruxton, therein and thereby commanding them and each of them, on a certain day and under a certain penalty to be therein inserted, that they personally be and appear before the judges of the circuit court of the United States for the seventh circuit and northern district of Illinois, at the court-room, in the city of Chicago, then and there to answer all and singular the premises, and to stand to and abide by and perform such order and decree therein as to your honor shall seem agreeable to equity and good conscience. And your orator will ever pray, &c.

W. F. JOHNSON.

JOHN J. MCKINNOR, *Solicitor, &c.*
R. T. MERRICK, *of Counsel.*

28 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

On this twenty-seventh day of December, one thousand eight hundred and sixty-two, personally came before me William F. Johnson, who, being duly sworn, saith that he is the complainant in the above bill named; that he has heard the foregoing bill of complaint read, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things therein stated upon information and belief, and as to these matters he believes it to be true.

FRED. W. COLE, *U. S. Com.*

EXHIBIT A.

This indenture, made this thirtieth day of April, in the year of our Lord one thousand eight hundred and sixty, (1860,) between William F. Johnson, of the city of Chicago, of the county of Cook, State of Illinois, party of the first part, and James Clapp, of the city of Chicago, county of Cook, and State of Illinois, party of the second part, witnesseth, that whereas the said William F. Johnson, the party of the first part, has executed his cer-
29 tain promissory note bearing even date herewith, payable to the order of himself, for the sum of five thousand (5,000) dollars, with interest at the rate of ten per cent. per annum, one year after date, at the Metropolitan Bank, New York City, N. Y. And whereas the said William F. Johnson being desirous of securing not only the prompt payment of said promissory note, but also of effectually securing and indemnifying the legal holder for or on account of any assignment, endorsement, or guaranty of said note: Now, therefore, the said party of the first part, in consideration of the premises, and for the purpose aforesaid, and in the further consideration of the sum of five thousand (5,000) dollars to him in hand paid by said party of the second part, the receipt whereof is hereby confessed, has and hereby does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, as successor in trust forever, all the following described premises, situate in the county of Cook, and State of Illinois, known and described as follows, to wit:

All that part of the southeast fractional ¼ of section twenty-seven, (27,) township thirty-nine (39) north, of range fourteen (14) east of the 3d p. m., beginning on the south line of said tract 14 76-100 chains east of the southwest corner thereof; thence running north 16½° west 5 50-100 chains; thence east parallel with the south line of said quarter section 10 45¼-100 chains, more or less, to Lake Michigan; thence southerly along Lake
30 Michigan to the south line aforesaid; thence westerly to the place of beginning, containing 5 53-100 acres, being the same land conveyed to the said Johnson by William F. Myrrick, by instrument dated May 24, 1851, and recorded in the recorder's office of Cook County, Illinois, in Book 46, on page 75.

Also the northwest quarter (¼) of northwest quarter (¼) of section one, (1,) township thirty-nine (39) north, of range thirteen (13) east of third principal meridian, also in Cook County, Illinois, with all buildings and improvements now on or which may be hereafter placed on said premises. To have and to hold the same, together with all and singular the privileges and appurtenances thereunto belonging. In trust, nevertheless, that in case of default in the payment of the said promissory note, or any part thereof, according to the tenor and effect of said promissory note, then on the application of the legal holder of said promissory note, it shall and may be lawful for the said party of the second part, his heir, assigns, or successors in trust, either in person or by attorney, to sell and dispose of said property or premises above described, and all the right, title, benefit, and equity of redemption of the said party of the first part, his heirs or assigns therein, at public auction, at the north door of the court-house, in the city of Chicago,
31 county of Cook, and State of Illinois, to the highest bidder or bidders for cash, first giving notice of the time and place of such sale by publishing such notice in one of the newspapers at that time published in said city of Chicago, ten (30) days before such sale, which sale may be adjourned from time to time as may by said party of the second part, his heirs, assigns, or successors in trust be thought expedient, by public proclamation or otherwise, personal notice to said party of the first part of such sale or adjournment of sale being hereby expressly waived; and said party of the second

part is hereby fully authorized to make, execute, and deliver to the purchaser or purchasers at such sale or adjourned sale good and sufficient deed or deeds of conveyance for the premises sold, and out of the proceeds of such sale, after first paying all costs of advertising and sale, commissions, and other expenses of this trust, including all money advanced for insurance, taxes, assessments, or liens of any kind on said premises, with interest thereon at ten per cent. per annum, to pay the amount of principal and interest which shall appear by said note to be unpaid at the time of such sale, rendering the overplus, if any, unto the said party of the first part, his legal representatives or assigns, on reasonable request, and it shall not be obligatory upon the purchaser or purchasers at any such sale to see to
32 the application of the purchase-money, which sale or sales as made shall be a perpetual bar both in law and equity against said party of the first part, his heirs and assigns, and all other persons claiming the premises aforesaid, or any part thereof, by, from, through, or under said party of the first part, or any of them. And the said William F. Johnson and his wife, parties of the first part, hereby expressly waive and release any and all right, benefit, privilege, advantage, and exemption under or by virtue of any and all statutes of the State of Illinois, providing for the exemption of homesteads from sale on execution or otherwise, and especially under the act entitled "An act to exempt homesteads from sale on execution," passed by the general assembly of the State of Illinois A. D. 1851, and approved February 11, A. D. 1851, and an act entitled "An act to amend an act to exempt homesteads from sale on execution," passed by said assembly A. D. 1857, and approved February 17, 1857. And the said William F. Johnson, for himself, his heirs, executors, and administrators, covenant and agree to and with the said party of the second part, his legal representatives or successors in trust, that at the time of the ensealing and delivery of these presents he was well seized of said premises in fee simple, and had good right, full power,
33 and lawful authority to grant, bargain, and sell the same in manner and form as aforesaid, and that the same are free and clear from all liens and encumbrances whatever, except as herein specified. And it is stipulated and agreed that in case of default in any of said payments of principal and interest as aforesaid, or of a breach of any of the covenants or agreements herein, then, and in that case, the whole principal sum hereby secured, and the interest according to the tenor and effect of said evidences of indebtedness to the time of sale, shall, at the option (without notice thereof to said party of the first part, his heirs, assigns, or legal representatives) of the legal holder or holders of said note, become at once due and payable, and the premises hereby conveyed may be sold in like manner, and with the same effect as if the said indebtedness had matured.

And it is further agreed by the parties hereto that on making sale as above provided for, the said party of the second part may sell the premises either in parcels or altogether, as he may see fit; that all the acts and trusts which he is by these presents empowered to perform and execute, he may perform and execute as well by attorney as in person, and that in case said party of the second part, either in person or by his attorney, shall hereafter
34 execute any deed, conveyance, or instrument in writing, which purports to be executed in pursuance of the provisions of this deed, such deed or instrument of writing shall be prima facia evidence that the same was properly and lawfully made by said party of the second part in pursuance of the powers hereby granted.

And it is further agreed and especially understood that in case of the death, resignation, removal from the city of Chicago, or other inability to act of the said party of the second part, then John Forsyth, of the said city of Chicago, shall be, and hereby is, appointed and made successor in trust

herein, with like power and authority as the said party of the second part, and the premises shall become vested in such new trustee accordingly.

In witness whereof, the said party of the first part hereunto set their hands and seals the day and year first above written.

W. F. JOHNSON. [SEAL.]
ELIZA JOHNSON. [SEAL.]

STATE OF ILLINOIS, *Cook County, City of Chicago, ss:*

I, Philip A. Hoyne, a notary public in and for the city of Chicago, in said county, in the State aforesaid, do hereby certify that William F. Johnson and Eliza, his wife, who are personally known to me to be the per-
35 sons whose names are subscribed to the within trust deed, as having executed the same, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth, and thereby conveyed all their right, title, and interest in and to the premises described in said deed, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption, under any and all homestead exemption laws, so called.

And the said Eliza Johnson, wife of the said William F. Johnson, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said trust deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower, and all right, title, and interest to the lands and tenements therein mentioned, and expressly waived and released all right, claim, benefit, privilege, advantage, and exemption, under any and all homestead exemption laws, so called, and without the compulsion of her said husband, and that she does not wish to retract the same.

36 Given under my hand and notarial seal, this seventh day of May, in the year of our Lord one thousand eight hundred and sixty.

[SEAL] PHILIP A. HOYNE, *Notary Public.*

No. 33,396. Filed for record May 21, 1860.

STATE OF ILLINOIS, *Cook County, ss:*

I, William L. Church, clerk of the circuit court and ex officio recorder of Cook County, State of Illinois, do hereby certify that the foregoing is a true and correct copy of a certain trust deed, wherein William F. Johnson is grantor, and James Clapp is grantee, which trust deed was filed in my office on the 21st day of May, A. D. 1860, and recorded in Book 198 of Deeds, on page 162.

Given under my hand and the seal of our said court, at Chicago, this 26th day of December, A. D. 1862.

[SEAL.] WM. L. CHURCH, *Clerk.*

Endorsed: Filed Dec. 27, 1862.

WM. H. BRADLEY, *Clk.*

[10 cent stamp.]

37 On the same day, to wit, the twenty-seventh day of December, A. D. 1862, a writ of subpœna was issued out of said clerk's office, against said defendants in said entitled cause, which said subpœna, together with the memorandum thereto attached and the return of the marshal thereon endorsed, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America to Benjamin F. Carver, James Clapp, and William Ruxton, greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of February next, to answer the bill of complaint of William F. Johnson this day filed in the clerk's office of said court, in the said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against
38 you by default.

To the marshal of the northern district of Illinois, to execute.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-seventh day of December, in the year of our Lord one thousand eight hundred and sixty-two, and of our independence the eighty-seventh.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[50 cent stamp.]

Memorandum.—The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

39 Circuit court of the United States of America, northern district of Illinois in chancery, December term, A. D. 1862.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, WILLIAM RUXTON.

To Benjamin F. Carver, James Clapp, and William Ruxton:

Take notice that the complainants will move this honorable court on the fifth day January, 1863, at the going in of the court on that day, or as soon thereafter as counsel can be heard, that a writ of injunction issue against the within-named defendants, Benjamin F. Carver, James Clapp, William Ruxton, in accordance with the prayer of the bill herein.

Yours, &c.

R. T. MERRICK & JNO. J. McKINNON,
Compl'ts' Solicitors.

Dated this 27th day of December, A. D. 1862.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents that I have appointed, and by these presents do appoint, Whitney Frank, my true and lawful deputy to execute
40 the annexed writ, (William F. Johnson *vs.* Benjamin F. Carver *et al.*, and to make true return thereon, according to law.

J. R. JONES, [SEAL.]
United States marshal of the northern district of Illinois.

I have this 29th day of December, A. D. 1862, served the within writ and notice, by leaving a copy in the hands of the within-named William Ruxton,

also on the same day by leaving a copy of the same in the hands of Bridget Huse, for Benjamin F. Carver at his dwelling-house, she being a free white person above the age of 20 years, and a member of his family. James Clapp I am unable to find in my district.

J. R. JONES, *U. S. Marshal,*
By WHITNEY FRANK, *Special Deputy.*

Endorsed: Filed March 2d, A. D. 1863.

WM. H. BRADLEY, *Clerk.*

41 On this day, to wit, the sixth day of January, A. D. 1863, came the said defendant William Ruxton, by J. V. Le Moyne, his solicitor, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois, in chancery, December term, A. D. 1862.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON.

I hereby enter the appearance of William Ruxton, one of the defendants in the above-entitled suit.

J. V. LE MOYNE,
Solicitor for said defendant, Ruxton.

Endorsed. Filed Jan. 6, 1863.

WM. H. BRADLEY, *Cl'k.*

And afterwards, to wit, on the tenth day of January, A. D. 1863, came the said defendant William Ruxton, by his solicitor, and filed in said clerk's office his demurrer to said bill of complaint, which said demurrer is
42 in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois, in chancery.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON.

The demurrer of William Ruxton, one of the defendants, to the bill of complaint of William F. Johnson, complainant.

This defendant, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth and alleged, does demur to the said bill, and for cause of demurrer shows that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery from this defendant, or any relief against him as to the matters contained in the said bill, or any of such matters, and that any discovery which can be made by this defendant touching the matters complained of in the said bill or any of them, cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against this
43 defendant by the said bill, nor entitle the said complainant to any relief in this court against this defendant touching any of the matters therein complained of. Wherefore, and for divers other good causes of de-

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murrer appearing in the said bill, this defendant demurs thereto, and he prays the judgment of this honorable court whether he shall be compelled to make any further and other answer to the said bill, and humbly prays to be dismissed from hence with his reasonable costs in this behalf sustained.

J. V. LE MOYNE,
Sol. for said Def't Ruxton.

In the circuit court of the United States for the northern district of Illinois, in chancery.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON.

I, the undersigned, counsel for the above-named defendant, William Ruxton, do hereby certify that in my opinion the above demurrer, intended to be filed in the above-entitled cause, is well founded in point of law.

J. V. LE MOYNE,
Sol. for said Def't Wm. Ruxton.

44 NORTHERN DISTRICT OF ILLINOIS, *ss:*

In the circuit court of the United States for said district, in chancery.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON.

William Ruxton, being duly sworn, deposes and says that he is one of the defendants in the above-entitled cause, and that the demurrer hereto annexed and intended to be filed in said cause is not interposed for delay.

WM. RUXTON.

Subscribed and sworn to before me this tenth day of January, A. D. 1863.

ALEXANDER M. GUTHRIE, *Notary Public.*

Endorsed: Filed Jan'y 10, 1863.

WM. H. BRADLEY, *Clerk.*

Which demurrer was subsequently withdrawn.

On this day, to wit, the twenty-seventh day of January, A. D. 1863, in the record of the proceedings af said court in said entitled cause is the following entry, to wit:

45 WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON. } Chancery.

On motion of complainant, by his solicitor, leave is given him to amend his bill herein.

On this day, to wit, the eighteenth day of February, A. D. 1863, came the said defendant Benjamin F. Carver, by J. V. Le Moyne, esq., his solicitor, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois, in chancery.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON.

I hereby enter the appearance of Benjamin F. Carver, one of the
46 defendants in the above-entitled suit.

J. V. LE MOYNE,
Solicitor for said Defendant Carver.

Endorsed: Filed Feb. 18, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the sixteenth day of March, A. D. 1863, came the said defendant William Ruxton, by his solicitor, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois, in chancery.

The answer of William Ruxton, one of the defendants, to the bill of complaint of William F. Johnson, complainant.

This defendant, saving and reserving to himself, now and at all
47 times hereafter, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering says:

That he has been informed and believes, and therefore admits, that the said complainant, on or about the 30th day of April, A. D. 1860, executed a promissory note, bearing date on that day, for the sum of five thousand dollars, payable to the order of himself one year after date, with interest at ten per cent. per annum, at the Metropolitan Bank, in New York City, but which note was not payable to the order of Benjamin F. Carver, as stated in said bill; and that on the said 30th day of April, A. D. 1860, the said complainant, with Eliza Johnson, his wife, to secure the payment of said note, executed to the defendant James Clapp a deed of trust of the premises in said bill first described, but for greater certainty this defendant prays leave to refer to said note and deed of trust when the same shall be produced to this court.

48 And this defendant, further answering, says that he knows not and cannot set forth, as to his belief or otherwise, whether said Carver did or did not deliver to said complainant a bank-book, as stated in said bill, or give credit therein for the amount of said note, or for any other sum, or whether said complainant did or did not make any further deposit with said Carver; or whether said Carver did or did not give credit in any such bank-book for any such further sum; or whether said complainant did or did not check, draw, order on, or receive from said Carver the sums of money in said bill mentioned, or any other sums; or whether the balance mentioned in said bill is or is not now on deposit to the credit of said complainant with said Carver; or whether the said complainant did or did not go to Denver City in the year 1860, as alleged in the said bill; or whether he ever received

from said Carver, or any one else, the said balance, or any part thereof; or whether said complainant has or has not ever made any checks, drafts, or orders on said Carver for said balance, or any part thereof; or whether any person or persons has or has not had any authority to check, order, draw on or receive said balance; or whether said complainant did or did
49 not deliver his bank-book, with other papers, to said Carver, as stated in said bill; or whether said complainant, after his return from Denver City, or at any other time, did or did not call on said Carver for the purpose or make the request of him stated and set forth in said bill; or whether said Carver did or did not then insist and claim as in said bill alleged, or make the statements therein set forth; or whether the said complainant did or did not agree to make a deed to said Carver of the premises in said deed of trust described, with other lands, and receive in payment therefor the said promissory note of five thousand dollars, and the further sum of four thousand dollars, or any other sum or sums; and as to all such matters this deponent leaves the said complainant to make such proof thereof as he may be able.

And this defendant, further answering, says that he has been informed and believes, and therefore admits, that said complainant, on or about the twenty-third day of March, A. D. eighteen hundred and sixty-one, his wife joining with him, executed a deed of that date, as in said bill stated and set forth, but for greater certainty this defendant craves leave to refer to said deed when the same shall be produced. But whether the same was or
50 was not delivered to said Carver for the purposes and under the circumstances stated in said bill, or what representations were made at the time in reference thereto, this defendant has no knowledge and cannot set forth as to his belief or otherwise.

And this defendant, further answering, says he denies that the premises in said deed described were at the time the said deed was made worth twenty thousand dollars or upwards.

And this defendant, further answering, says that he was applied to by said Carver to know if he would buy the said premises described in said last-mentioned deed, said Carver then telling this defendant that said premises or a part of them were incumbered by a mortgage or trust deed for five thousand dollars and interest, and that said premises could be bought for the sum of four thousand dollars over and above said incumbrance, and this defendant after some consideration agreed to buy said premises, he assuming the payment of said incumbrance, for five thousand dollars, and to pay to said complainant the sum of four thousand dollars. That said Carver represented that the said complainant owned said land, and before said
51 sale was concluded said Carver brought said complainant to the office of this defendant, and this defendant and said complainant in person then and there agreed upon the terms of said sale, the said complainant to receive two thousand dollars in cash and the balance, to wit, $2,000, to be paid thereafter by this defendant to said complainant, and that until said payment was made said defendant James Clapp was to hold the title to said premises; that this defendant afterwards paid said complainant said sum of two thousand dollars as had been agreed, and the said complainant directed said Clapp to convey said premises to this defendant, and said Clapp did afterwards convey two of said pieces of land to this defendant, and holds the other in trust for this defendant.

And this defendant, further answering, says that he knows nothing of any correspondence or transactions between said complainant and said Carver, or B. F. Carver & Co., and that he knows not, and cannot set forth, what representations were made to said complainant when he met said Carver on

his, complainant's, second return from Denver City, as alleged in said bill; but this defendant says that there was a mistake in the said deed from said complainant to said Carver, hereinbefore mentioned, and a new deed
52 was executed and delivered to said Clapp to correct this mistake, which deed was dated the 9th day of December, A. D. 1862, and is the deed of that date mentioned in said bill of complaint, but for greater certainty this defendant prays leave to refer to said deed when the same shall be produced.

And this defendant, further answering, says he denies that said deed was to be held by said James Clapp as an escrow, but says the agreement was that said Clapp should retain the title until this defendant paid the balance of two thousand dollars, which he did.

And this defendant denies the statement in said bill, that he informed complainant that he, this defendant, would not pay said sum of two thousand dollars when due, unless complainant would consent for said Clapp to make this defendant a deed for a part of said premises, that said Carver was insolvent, and that said complainant could not collect same of this defendant by law. But this defendant says that just before the two thousand dollars, being the balance due said complainant, became due this defendant saw said Clapp and told him he was ready to pay said sum of two thousand dollars, and wished the said property to be conveyed to him, this defendant,
53 and said Clapp told this defendant that he must see said complainant first before making said conveyance. That afterwards said Clapp and said complainant came to the office of this defendant, when this defendant told said complainant, that he was ready to pay him said sum of two thousand dollars, and wished a deed of said premises from said Clapp, and the said complainant then and there directed said Clapp to convey said premises to this defendant, and this defendant then paid to said complainant said sum of two thousand dollars, and said Clapp afterwards made the deed of said premises hereinafter mentioned in accordance with the directions of said complainant.

And this defendant, further answering, says that he admits that on or about the 15th day of December, A. D. 1862, said James Clapp executed and delivered to this defendant a deed of the premises as described in said bill, and this defendant says that said deed was made by the express direction of said complainant, and after he had been paid the full amount due him as above set forth.

And this defendant further says, he knows nothing of any application made by said complainant to said Carver in relation to the payment
54 of said two thousand dollars, as stated in said bill, nor of said complainant's calling on said Billings, or of said Billings finding the said bank-book, or of the contents of said bank-book, or whether said Carver was or was not on the 23d March, A. D. 1861, the owner of said note of five thousand dollars; but this defendant admits that one Green now holds said note, but the same is secured on the said property so conveyed to this defendant, and therefore said complainant suffers no damage on account of it.

And this defendant denies that he has any knowledge, notice, or information of any of the dealings or transactions of said complainants with said Carver, or with the firm of B. F. Carver & Co., or of any correspondence or intercourse between them as of any matter or thing whatever relating to the business of the said complainant, with the said Carver or B. F. Carver & Co., or any other person or persons except as herein stated by this defendant, and he denies that he aided, abetted, or assisted said Carver in manner stated and charged in said bill. But this defendant insists that

he has acted throughout the whole of the transactions referred to
55 in said bill with perfect fairness and good faith towards said complainant. And this defendant does and will insist that he is a bona fide purchaser of the said premises for a valuable consideration without notice of any fraud, or collusion, or want of good faith, and that the conveyance to said Carver and Clapp and the conveyance from said Clapp to this defendant ought not to be set aside, but, on the contrary, ought to be confirmed by the decree of this court, and that this defendant ought not to be restrained from making any conveyance or transfer of this property.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is in the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain and prove as this honorable court shall
56 direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

WM. RUXTON.

J. V. Le Moyne, *Def't's Sol's and of Counsel.*

Endorsed: Filed March 16, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the sixth day of April, A. D. 1863, came the said defendant, Benjamin F. Carver, by his solicitor, and filed in said clerk's office his answer in said entitled cause, which said answer is in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois, in chancery.

The separate answer of Benjamin F. Carver, one of the defendants, to the bill of complaint of William F. Johnson, complainant.

57 This defendant, saving and reserving unto himself, now and at all times hereafter, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complaint's said bill of complaint contained, for answer thereunto or unto so much and so much parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says that he admits that on or about the 30th day of April, A. D. 1860, the said complainant executed a promissory note, bearing date on that day, for the sum of five thousand dollars, ($5,000,) payable to the order of himself one year after date, with interest at ten per cent. per annum, at the Metropolitan Bank, in New York City, (but this defendant denies that said note was delivered by said complainant to this defendant or was payable to the order of this defendant,) and that on the said 30th day of April, A. D. 1860, the said complainant with Eliza Johnson, his wife, to secure the payment of said note, executed to the defendant James Clapp a deed of trust of the premises in said bill just described, but for greater certainty this defendant prays leave to refer to said note and deed of trust when the same
58 shall be produced.

And this defendant, further answering, says he denies the correctness of the statements in the said bill contained with regard to the delivery of a bank-book to the said complainant and to the credit entered therein;

but this defendant says that the real facts with regard to the said promissory note and to the said bank-book are as follows:

That the said note, being payable to the order of himself, the said complainant, was, after being endorsed by him, delivered by him, with the said deed of trust, to said James Clapp, who acted as the agent and attorney of said complainant, for the purpose of being sold for the best price (above four thousand dollars) that could be obtained for the same; and said complainant, as this defendant is informed and believes, then gave said Clapp express instructions with regard to the sale of said note; that said Clapp applied to this defendant to purchase said note, at the same time representing to this defendant that, at the request of said complainant, he, said Clapp, had made sundry advances to said complainant on account of said note, amounting in the whole to between five hundred and one thousand dollars, the precise amount this defendant cannot now recollect; that, before purchasing
59 the same, he, this defendant, requested said Clapp to obtain from said complainant his written authority to sell the same, which said Clapp accordingly did, and showed such authority to this defendant, and this defendant then purchased said note of said Clapp for forty-five hundred dollars, ($4,500;) that this defendant thereupon credited said complainant in a memorandum book of said complainant's with said forty-five hundred dollars, and with the consent, and at the request of said complainant paid to said Clapp the money advanced by him to said complainant as aforesaid, the amount so paid to be charged by this defendant to said complainant.

And this defendant, further answering, says he neither admits nor denies the statement contained in said bill as to the monies subsequently deposited by said complainant with this defendant, but this defendant alleges that there was but one other deposit made; this defendant knows that said complainant received about ten thousand dollars about the time alleged in said bill, but whether the defendant credited said complainant with the
60 whole of said sum, and then paid out at once two thousand dollars, or whether said payment of two thousand dollars was made first and said complainant credited with the balance, to wit, eight thousand dollars, this defendant cannot now recollect, and has no entry of the deposit, and cannot certainly say. And this defendant says that the whole of the monies so deposited, together with the balance of said forty-five hundred dollars, were afterwards drawn out by said complainant, that is to say, on said complainant's own checks on Marine Bank, Chicago Marine and Fire Insurance Company, and this defendant, about two thousand dollars; and the whole balance on checks drawn by this defendant at the request of said complainant and for his use, the whole of said money having been paid to said complainant, or to his wife or creditors at his request.

And this defendant denies that there is now or was at the time of filing the said bill of complaint any balance or deposit to the credit of said complainant with this defendant, and says that he, this defendant, has now no money in his hands belonging to said complainant, and is not, and was
61 not at the time of filing the said bill, indebted to him in any sum or sums whatsoever.

And this defendant, further answering, says he denies that said complainant, after returning from Denver City, called upon him for the purpose of paying off and discharging the said promissory note and deed of trust, the truth being that when said complainant returned from Pike's Peak the first time he had no money to his credit with this defendant, as he, the said complainant, well knew. And this defendant denies that he ever represented to said complainant that he never gave to said complainant a bank-book or that he, this defendant, made the other statements with regard to the said bank-book, or to the credits entered therein, or to the said forty-five hundred

dollars in said bill contained, the fact being that said complainant had left the said bank-book at the office of the firm of B. F. Carver & Co., and not with this defendant personally, and when said complainant applied for the same this defendant was unable to find it, although, as this defend-
62 ant is informed, it was afterwards found by this defendant's late partner, Coddington Billings, (who has had the charge of all the papers, &c., of the firm of B. F. Carver & Co.,) among the books of said B. F. Carver & Co., but without having been written up by this defendant, there being a number of payments made by this defendant for said complainant, and on his request, which had not been charged in said book, so that said bank-book did not and does not now show correctly how the account of said complainant with this defendant stood at the time he, said complainant, received said book from said Billings, or since, and said complainant had no right to receive the said bank-book from said Billings without the same having been written up and such charges made. And this defendant denies having represented to said complainant that he still owned and possessed the said note when the said complainant saw this defendant on his, complainant's first return from Pike's Peak, or at the time of the making of the said deed of the 23d day of March, A. D. 1861, the fact being that said complainant then well knew that the said note had been assigned to and was then held and owned by David R. Greene.

63 And this defendant, further answering, says he admits that said complainant, with his wife, executed the deed dated the 23d day of March, A. D. 1861, in said bill set forth, but this defendant denies that he made any false or fraudulent representations to said complainant to induce him to make the said deed, and he denies all the statements and charges to that effect in said bill contained.

And this defendant, further answering, says he denies that at the time of making the said deed the said property was worth the sum of twenty thousand dollars, or that said complainant was deceived or kept in ignorance as to the real state of the account between said complainant and this defendant, but this defendant avers that the said complainant at that time well knew that he had no money in the hands of this defendant, and that he was liable to the full amount of said note.

And this defendant, further answering, says it is true there was a mistake in said last-named deed by reason of no consideration having been expressed therein, and that he afterwards requested said complainant to execute a quitclaim deed of said property to said Clapp, and that said complainant
64 agreed to do so, and with his wife executed the quitclaim deed dated the 9th day of December, A. D. 1862, in said bill mentioned to correct the said mistake. And this defendant denies that said complainant executed the said deed in ignorance of his rights, but says that he well knew at the time said deed was executed the real state of his affairs. This defendant also denies that he, or said Clapp, to his, defendant's, knowledge, was to hold the said quitclaim deed as an escrow or as security for the sum of two thousand dollars, as stated in said bill.

And this defendant, further answering, says that he admits that on the 15th day of December, A. D. 1862, said James Clapp executed and delivered to the defendant William Ruxton a deed, as set forth in said bill and for the property therein described; and this defendant says that said deed was made with the knowledge and assent of said complainant, and not in violation of any trust reposed in said Clapp by him, and that the facts in regard to the sale to said Ruxton are as follows:

That said complainant, being desirous of selling said premises, applied to this defendant to sell the same for him, and for the sum of four thou-
65 sand dollars over and above the incumbrance for about five thousand

dollars then held by said Greene; that this defendant applied to said Ruxton to buy the same, and the said Ruxton afterwards agreed to do so, and thereupon this defendant took said complainant to the office of said Ruxton, and then introduced him to said Ruxton, and the said complainant and said Ruxton then and there, in the presence of this defendant, agreed upon all the terms of sale; that by the terms of said sale said Ruxton was to pay four thousand dollars for all the property, subject to the incumbrance to said Greene, two thousand dollars of which was paid forthwith, and the balance to stand on time; that the title should be held by said James Clapp until the whole purchase-money was paid by said Ruxton, when the premises were to be conveyed by said Clapp to said Ruxton; that all of the payments agreed upon were made as agreed, and said complainant directed said Clapp, who was acting as the attorney for said complainant, to convey said premises to said Ruxton.

And this defendant, further answering, says that after said complainant had been paid by said Ruxton as aforesaid, this defendant and said
66 complainant had a full settlement of their accounts, in which settlement the said complainant received credit for the sums hereinbefore mentioned to have been deposited with this defendant and claimed in said bill as having been paid by said complainant to this defendant.

And this defendant further says that he has no knowledge of any statements, or representations made by said Ruxton to said complainant or to said Clapp, as to the payment of two thousand dollars as charged in said bill.

And this defendant further says that all his dealings and transactions with said complainant have been conducted in good faith, and without any fraud or deception on his part, and that the several statements and charges to the contrary contained in said bill are wholly untrue and without any foundation in fact.

And this defendant further says that, to the best of this defendant's knowledge and belief, the said William Ruxton had no notice or knowledge of any of the dealings or transactions of said complainant with this defendant or with said Clapp, and that the said purchase was made by said Ruxton
67 as aforesaid in good faith and upon a full valuable consideration, and without notice of any equities arising out of the transactions between the said complainant and this defendant and said Clapp, or either of them. And this defendant denies that the said conveyance to this defendant or the quitclaim to said Clapp was obtained by false or fraudulent representations, or that the deed to said Ruxton was made in violation of any agreement between said complainant and said defendant and said Clapp, or either of them, or that said Clapp had no right or authority to make the said deed.

This defendant also denies that when said complainant called on said Billings with regard to the said bank-book he, said complainant, made any such statement to said Billings as is alleged in said bill.

This defendant neither admits nor denies the statements in said bill contained as to the contents of the said bank-book, as he, defendant, has no copy thereof, but pray leave to refer thereto when the same shall be produced.

And this defendant further says that, to the best of his knowledge and belief, the said James Clapp acted throughout the transaction re-
68 ferred to in said bill of complaint with good faith towards said complainant and without any deception or making any false or fraudulent representations, and that the statements in said bill to the contrary are wholly untrue.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that any

other matter, cause, or thing in the said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

BENJAMIN F. CARVER,
By J. V. LE MOYNE, *his Solicitor.*

J. V. LE MOYNE,
Def't's Sol'r and of Counsel.

Endorsed: Filed April 6, 1863.

WM. H. BRADLEY, *Clk.*

69 On this day, to wit, the sixth day of April, A. D. 1863, came the said Benjamin F. Carver, by his solicitor, and filed in said clerk's office the following stipulation in said entitled cause, which is in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Illinois, in chancery.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON.

It is hereby stipulated that the answer of the defendant Benjamin F. Carver to the bill filed in the above-entitled cause may be filed without his signature thereto, the name being signed by his solicitor for him, he being at this time absent from Chicago.

MERRICK & McKINNON,
Sol's, &c., for Comp't.

Endorsed: Filed April 6, 1863.

WM. H. BRADLEY, *Clk.*

70 On this day, to wit, the 17th day of April, 1863, came the said complainant, by his solicitor, and filed in said clerk's office his replication to the answers of Benjamin F. Carver and William Ruxton in said entitled cause, which said replication is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

Circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery sitting.

WILLIAM F. JOHNSON, complainant,
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON, defendants.

The replication of the above-named complainant to the separate answers of the above-named defendant Benjamin F. Carver and William Ruxton.

71 This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answers, for replication thereunto say that he will aver and prove his

said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by his said bill he has already prayed.

MERRICK & McKINNON,
Solicitors for Complainant.

Endorsed: Filed April 17, 1863.

WM. H. BRADLEY, *Clk.*

72 On this day, to wit, the fourth day of June, A. D. 1863, came the said defendant James Clapp in person, and filed in said clerk's office his appearance in said entitled cause, which is in the words and figures following, to wit:

In United States circuit court for northern district of Ill's.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER AND OTHERS. } Bill in ch'y.

I do hereby enter my appearance in the above-entitled cause.

JAMES CLAPP, *in person.*

June 4th, 1863.

Endorsed: Filed June 4, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the eighteenth day of July, A. D. 1863, came the said defendant, James Clapp, and filed in said clerk's office in said entitled cause his answer, which is in the words and figures following, to wit:

73 In the circuit court of the United States for the northern district of Illinois, in chancery.

The answer of James Clapp, one of the defendants, to the bill of complaint of William F. Johnson, complainant.

This defendant, saving and reserving to himself now and all times hereafter all benefit and advantage of exception which can or may be had or taken to the many errors and uncertainties and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised are material or necessary for him to make answer unto, answers and says that he denies that the said complainant made and executed to this defendant the note described in the bill of complaint; but he admits that the said W. F. Johnson, on or about the 30th day of April, A. D. 1860, executed a promissory note, bearing the same date, for the sum of five thousand dollars, payable to the order of himself one year after date, with interest at ten per cent. per annum after due at the Metropolitan Bank, in New York City, which
74 note this defendant believes is the note referred to and intended to be described in said bill, and admits that on the said 30th day of April, A. D. 1860, the said complainant, with Eliza Johnson, his wife, to secure the payment of said note, executed to this defendant a deed of trust of cer-

tain premises as in the said bill first described, and to which deed of trust and note when produced this defendant for greater certainty prays leave to refer.

And this defendant, further answering, says that he knows not and cannot set forth as to his belief or otherwise whether said Carver did or did not deliver to the said complainant a bank-book as stated in said bill, or give credit therein for the amount of said note or for any other sum; or whether said complainant did or did not make any further deposit with said Carver; or whether said Carver did or did not give credit in any such bank-book for any such further sum; or whether said complainant did or did not

75 check, draw, order on, or receive from said Carver the sums of money in said bill mentioned or any other sums; or whether the balance mentioned in said bill is or is not now on deposit to the credit of said complainant with said Carver; or whether the said complainant did or did not go to Pike's Peak in 1860, as alleged in said bill; or whether he ever received from said Carver or any one else the said balance; or whether said complainant has or has not made any drafts or orders on said Carver for said balance or any part thereof, though this defendant alleges that he has seen drafts and checks made and signed by complainant on said Carver to a large amount and dated after the 22d day of July, A. D. 1860; or whether any person or persons has or has not had any authority to check, order, draw, or receive said balance; or whether said complainant did or did not deliver his bank-book with other papers to said Carver as stated in said bill, or whether said complainant after his return from Pike's Peak, in March, 1861, did or did not call on said Carver, or at any other time prior to November, A. D. 1862, for that purpose, or make the request of him as stated and set forth in said bill; or whether said Carver did or did not then insist

76 and claim as in said bill alleged or make the statements therein set forth; or whether the said complainant did or did not agree to make a deed to said Carver of the premises in said deed of trust described, with other lands, and receive in payment therefor the said promissory note of five thousand dollars and the further sum of four thousand dollars, or any other sums, and as to all such matters this defendant leaves the said complainant to make such proof thereof as he may be able.

And this defendant, further answering, says he admits that said complainant on or about the 23d day of March, A. D. 1861, his wife joining with him, executed a deed of that date as in said bill stated and set forth, but for greater certainty this defendant craves leave to refer to said deed when the same shall be produced, but what the circumstances were under which said deed was made, or whether the same was or was not delivered to said Carver for the purpose and under the circumstances stated in said bill, or what representations were made at the time in reference thereto, this defendant has no knowledge and cannot set forth as to his belief or otherwise.

And this defendant, further answering, says he denies that the premises in said deed described were, at the time said deed was made, worth twenty thousand dollars or upwards.

77 This defendant, further answering, says that it may be true that the said complainant went to Pike's Peak a second time and returned in the month of November, A. D. 1862, as stated in said bill of complaint; but whether the said complainant did go to and return from Pike's Peak, or met the said Carver, or was informed by him that there was a mistake in the last above-mentioned deed, or whether the said Carver requested him to make quitclaim deed to rectify the same, or whether he stated he had become embarrassed in business, or whether he had correspondence with said Carver or with said Carver & Co., or whether he remitted quantities of gold

bullion from Denver City or any other place, this defendant, being an entire stranger to the several matters aforesaid, cannot set forth, but leaves the said complainant to such proof as he shall be advised to produced. This defendant admits that the said complainant and Eliza, his wife, did, on the said 9th day of December, A. D. 1862, execute and deliver to this defendant a quitclaim deed for the premises described in said bill, and that the deed was duly recorded as alleged; but this defendant denies that the same was done at this defendant's request or solicitation in any manner whatever, and denies that he combined and confederated with the said B. F. Carver
78 and William Ruxton, or either of them, "the better to cheat and defraud the said complainant out of his hard-earned property or out of the premises described in said last-named deed, so as to place the same beyond the reach and power of a court of equity," as is charged in said bill.

This defendant, further answering, admits that on or about the 15th day of December, A. D. 1862, this defendant did execute and deliver to the said William Ruxton a deed of the premises so as aforesaid quitclaimed to this defendant by said complainant, as set forth in the bill; but this defendant denies that it was in violation of the trust by the said complainant in him reposed; on the contrary, this defendant expressly avers that he did so execute and deliver the said deed to the said William Ruxton at the earnest request and solicitation of the said W. F. Johnson, complainant.

This defendant, further answering, says that he is a stranger to all the matters alleged in said bill in regard to the bank-book; that he never has seen said book; that he knows nothing of its contents; that he has no knowledge of the entries made therein; that whether one Billings had the same in his possession, or found the same in his vault or among
79 bank-books and papers left by said Carver with him, this defendant has no knowledge, information, or belief, and leaves the complainant to such proof as he shall be ordered to produced. This defendant admits that the said B. F. Carver was not, on the 23d day of March, A. D. 1861, the owner and possessor of the said note of $5,000, and that the same, together with the security, had been transferred to one Green, who is not a resident of New Jersey as is incorrectly stated in said bill, but of New Bedford, Massachusetts; but this defendant denies that this defendant, on the 23d day of March, A. D. 1861, or at any time, represented that said Carver held said note and security, but, on the contrary, from and after the 1st day of August, A. D. 1860, understood and treated the said note and security as being owned and possessed by said Green, of New Bedford aforesaid.

This defendant, further answering, denies that he individually or in connection with the said B. F. Carver and William Ruxton, or with either of them, or with any one in any way or manner, committed any fraudulent acts or made any false and fraudulent representations whatever, or statements, or claims, or pretences; and this defendant neither defrauded nor intended to defraud, nor assisted, nor countenanced any one in defrauding the
80 said complainant as is falsely and wantonly charged in said complainant's bill, nor does he know of any fraudulent act committed upon said complainant by any one.

And this defendant, further answering, avers the facts to be that on or about the 30th day of April, A. D. 1860, the said complainant made and executed his certain note for the sum of $5,000, payable to his own order, and due one year from the date thereof, at ten per cent. after maturity, and to secure the same made and executed his certain trust deed bearing even date with said note, as set forth and described in said bill, and desired, authorized, and empowered this defendant in writing to negotiate and sell the same for the sum of four thousand dollars or upwards, which authority, in writing

duly executed, is now in this defendant's possession and to which he begs leave to refer. Whereupon the said B. F. Carver offering the sum of four thousand five hundred dollars for said note the said complainant accepted the same and directed this defendant to transfer and deliver to the said B.
F. Carver the said note and trust deed, which this defendant did in
81 accordance with the directions and request of said complainant, and
for an account of which the said Carver thereafter paid the said complainant the sum of forty-five hundred dollars, as this defendant is informed and believes.

And this defendant further says that a short time before the sale to said Ruxton, hereinafter mentioned, the said complainant offered said premises described in the bill, subject to said trust deed, for sale, and authorized one S. H. Kerfoot, a land agent in the city of Chicago, to sell the same, as the said complainant informed this defendant, at the sum of four thousand dollars over and above the incumbrance of the five thousand dollars aforesaid.

And this defendant further says that said complainant, shortly after the above-mentioned time, came into the office of this defendant, and urged and repeatedly requested this defendant to purchase the fee of said property at the sum of four thousand dollars, and the said complainant then and in divers conversations urged and insisted that this defendant purchase said property, and then and there insisted and declared to this defendant, as also
to the said Benjamin F. Carver and to E. G. Hooke, and in
82 the presence of each and all of them, that the said premises were
free and clear of all liens, judgments, and incumbrances whatever, except the lien of the trust deed securing the note of five thousand dollars aforesaid, held by said Green—taxes and tax titles also excepted; and said complainant represented that there was due for back interest the sum of five hundred dollars, and five hundred dollars only, as he knew by letters and correspondence with said Green during the summer then last past, and from whom he, the said complainant, had received such letters at Chicago and at Pike's Peak, and that this defendant on the payment of the said lien of $5, 500, and further sum of four thousand dollars, could have all the premises above mentioned in said deed of trust and bili of complaint in fee, free from all liens and demands against him, the said Johnson, whatsoever; otherwise, the said S. H. Kerfoot would be directed to sell at the same price to any one desiring to purchase the same.

And this defendant, further answering, says that he examined the said
premises and the liens upon the same, and looked into the said com-
83 plainant's affairs, and declined to purchase said premises.

And this defendant, further answering, says, upon this defendant declining to purchase said premises, the said B. F. Carver was also applied to by the said complainant to purchase said property, and the said Carver agreed to find a purchaser for the same; and said Carver did shortly thereafter offer, for and on behalf of one William Ruxton, to give and advance the said four thousand dollars for the said property, over and above the said lien of $5,000 and interest due on same, which said offer said complainant then and there accepted.

And this defendant further says that on or about the 15th day of December, A. D. 1862, the said Ruxton was ready, and offered to pay to said complainant the sum of two thousand dollars, balance of the purchase-money agreed upon as aforesaid, at his office, and this defendant believes he did pay to said complainant the said sum of two thousand dollars, and thereupon the said complainant directed this defendant to make a deed to said Ruxton or to such persons as said Ruxton should designate, it having been expressly understood by and between the said parties that

84 whatever liens and charges there were against the said complainant upon the premises aforesaid, amounting to a large sum over and above the said five thousand dollar note and interest, the same should be paid by said Ruxton, and deducted from the said four thousand dollars so agreed to be paid by him, as this defendant is informed and believes.

And this defendant further states that on the same day or the day following, but which day this defendant does not now recollect, he examined and computed with said complainant the liens and judgments upon this said property, and shewed to and discussed with, and computed the accounts between, said complainant and said Carver, the cheques and figures of the said Carver and his claims and credits being shown to the said complainant, and amounting to some fourteen thousand dollars and over.

And after said examination and computation, said complainant then and there claimed the further sum of one hundred and fifty dollars, which
85 sum this defendant paid by check, and said complainant then gave this defendant a receipt in full for all claims or demands upon said Carver.

And this defendant further says that he had no interest in the sale of said premises to said Ruxton, or to any one, nor did he charge or receive, nor does he expect to receive, any pay or compensation from either complainants or other defendants; that his services in the whole matter have been performed in good faith, and with a desire to serve all parties, gratuitously. And this defendant urges and sets forth to this honorable court that the allegations of fraud in said bill relating to the sale of land to said Ruxton, are false, and that said purchase was fair and honorable, and this defendant denies all combination or confederacy charged against him in said bill of complaint. All which matters and things this defendant is ready to aver and prove and maintain as this honorable court shall direct, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

JAMES CLAPP, *in person.*

JOHN E. CARY, *of Counsel.*

86 NORTHERN DISTRICT OF ILLINOIS, *ss:*

On this seventeenth day of July, A. D. 1863, before me personally appeared the above-named James Clapp, and made oath that he has read the above bill by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated to be on information or belief, and as to those matters he believes it to be true.

[SEAL.] JOHN FORSYTHE, *Notary Public.*

Endorsed: Filed July 18, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the twenty-second day of July, A. D. 1863, came the said complainant, by his solicitor, into said clerk's office, and filed his replication to the answer of William Ruxton, [James Clapp,] in said entitled cause, which said replication is in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

Circuit court of the United States for the eighth circuit and northen district of Illinois, in chancery sitting.

87 WILLIAM F. JOHNSON, complainant,
vs.
BENJAMIN F. CARVER, JAMES CLAPP AND WILLIAM RUXTON, defendants.

The replication of the above-named complainant to the separate answer of the above-named defendant, William Ruxton, [James Clapp.]

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and
88 by his said bill he has already prayed.

JNO. J. McKINNON & R. T. MERRICK,
Solicitors for Complainant.

Endorsed: Filed July 22d, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the sixteenth day of December, A. D. 1863, in the record of the proceedings in said court in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER *et al.* } Chancery.

On application of complainant's solicitor, time is extended two days, in which to take the testimony of Stephen G. Hooke; such testimony to be taken at complainant's costs, and to be subject to the opinion of the court under the stipulation of the parties heretofore filed herein.

89 And afterwards to wit, on the second day of March, A. D. 1864, in the record of the proceedings in said court in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER *et al.* } Chancery.

Now comes Thomas P. Akers, by Merrick & McKinnon, solictors, and on motion leave is given him to file his petition herein.

And thereupon on the same day, to wit, the second day of March, A. D. 1864, came the said petitioner Thomas P. Akers, by Merrick & McKinnon, his solicitors, and filed his petition in said entitled cause, which is in the words and figures following, to wit:

90 United States of America, in chancery, in the circuit court of the United States for the eighth circuit and northern district of Illinois.

To the honorable the judges of the circuit court of the United States for the circuit and district aforesaid:

The petition of Thomas P. Akers, who is a citizen of the State of New

York, unto your honors most respectfully showeth that heretofore, on or about the 27th day of December, A. D. 1862, one William F. Johnson, a citizen of the State of Connecticut, exhibited and filed in said court his original bill of complaint against Benjamin F. Carver, James Clapp, and William Ruxton, defendants, citizens of the State of Illinois, residing in said district, thereby stating in substance that on or about the 30th day of April, A. D. 1860, at said district, he made and delivered to said Carver, then a banker and trader of Chicago, his certain promissory note of that date for the sum of five thousand dollars, payable to his order one year after date,
91 with interest at ten per cent. per annum, and that, to secure the same, on or about the said day and year, his wife joining with him, he executed and delivered to the defendant James Clapp, as trustee, a deed of trust on certain premises in Cook County, Illinois, described as follows, namely. All that part of the southeast fractional ¼ of section twenty-seven (27,) township thirty-nine (39) north, of range fourteen (14) east of the 3d p. m., beginning on the south line, said tract, 14 76-100 chains east of the southeast corner thereof; thence running north 16 1-2 west, 5 50-100 chains; thence east, parallel with the south line of said quarter section, 10 45½-100 chains, more or less, to Lake Michigan; thence southerly, along Lake Michigan, to the south line aforesaid; thence westerly to the place of beginning, containing 5 53-100 acres, (being the same land conveyed to the said Johnson by William F. Myrrick, by instrument dated May 24th, 1851, and recorded in the recorder's office of Cook County, Illinois, in Book 46, on page 75;) also all the northwest quarter (¼) of northwest quarter (¼) of section one (1,) township thirty-nine (39) north, of range thirteen (13) east
92 of third principal meridian. Conditioned to be void on the payment of said note.

That, in consideration of said note, the said Carver delivered to said Johnson a bank-book, and gave him credit therein as of the 26th day of April, A. D. 1860, for the sum of four thousand five hundred dollars as proceeds of said note.

That on or about the 11th of June, A. D. 1860, Johnson deposited with said Carver the further sum of ten thousand two hundred and forty-five dollars, and received credit therefor in said bank-book, and that after receiving said bank-book and making the deposites aforesaid, Johnson, on divers days and times up to and including the 22d day of July, A. D. 1860, received from said Carver divers sum of money, amounting in all to the sum of nine thousand four hundred and sixty-two dollars and eighty-four cents, and no other or further sum or sums whatsoever, leaving to his credit with said Carver a balance of five thousand two hundred and eighty-two dollars and sixteen cents.

That on or about the 23d day of July, A. D. 1860, said Johnson went to Denver City, commonly known as Pike's Peak, and did not return
93 therefrom until the month of , A. D. 1861, and that after the said 22d day of July, A. D. 1860, he neither received of or from the said Carver or any one else the said balance of five thousand two hundred and eighty-two dollars and sixteen cents, or any part thereof, and never made any orders, drafts, checks, or drawn or caused to be drawn any bills of exchange on said Carver, for the said balance or any part thereof, and that no person or persons had or has any authority or power from him of any nature or kind to check, order, draw, or receive the said balance or any part thereof for him, and that the same is actually and equitably due and owing him from said Carver.

That at the time said Johnson went to Denver City as aforesaid, and down to and until a very late day, he had and reposed most implicit confidence and reliance in said Carver for integrity, honesty, and truthfulness,

and so having and reposing confidence then gave and delivered his said bank-book and other valuable papers to said Carver for safe-keeping, and to be returned when called for. That soon after returning from Denver City
94 as aforesaid, he called on said Carver, at his office, then in the Marine Bank building in Chicago, to get his said bank-book and pay off and discharge his said note and deed of trust, with the balance therein to his credit.

That Carver then knowingly falsely and fraudulently denied having the said bank-book, and denied owing said Johnson any sum of money whatever, and denied giving said Johnson a bank-book, and pretended, claimed, and stated that he did not credit said Johnson with the said note less five hundred dollars, and that there was no credit of four thousand five hundred dollars, to Johnson in said bank-book for said note, and that the bank-book would not show any such credit, but that on the 26th of April, A. D. 1860, he discounted the said note for said Johnson, and paid over to him in cash the sum of four thousand five hundred dollars as the amount of said note, less the sum of five hundred dollars discounted therefrom, and that Johnson received the money and did not deposit it with him. All of which state-
95 ments of said Carver Johnson charges were false and fraudulent, and made with intent to cheat, swindle, and defraud him out of the said sum of five thousand two hundred and eighty-two dollars and sixteen cents, and the premises thereinafter in said bill described.

That owing to and in consequence of the said false and fraudulent statements so made by Carver, and the great and implicit faith and confidence which he had and reposed in Carver for truthfulness and integrity, Johnson was deceived and induced to believe, and did believe himself mistaken as to the fact that he had left his said bank-book with Carver, and as to the fact that the said bank-book contained and showed that on the said 26th day of April, A. D. 1860, Carver gave him credit therein for the sum of four thousand five hundred dollars, as the amount of said promissory note, less five hundred dollars discount therefrom, and as to the fact that said Carver was then indebted to him in the sum of five thousand two hundred and eighty-two dollars and sixteen cents, and was thereby further induced
96 and led to believe that he had received the said four thousand five hundred dollars as stated by Carver, and that he had lost or mislaid his said bank-book; and being so induced, deceived, and led to mistake the real facts in consequence of said Carver's false and fraudulent statements and representations, and said Carver also having stated and represented to him that he was still the owner and holder of the said note of five thousand dollars then soon maturing, and which said Johnson could not then pay without great loss and sacrifice, said Johnson, at the instance and request of Carver, agreed to make Carver a deed for the mortgaged premises with some other lands, and receive in payment therefor the said note of five thousand dollars and the sum of four thousand dollars. And that afterwards, on the 23d day of March, A. D. 1861, Johnson, relying upon and believing the aforesaid statements of Carver to be true, and that Carver was still the owner of his note, made, executed, and delivered (his wife joining him) to said Carver a deed for the premises in Cook County, Illinois, described as follows, to wit: The one equal undivided one half part of the
97 southwest quarter of section twenty-nine, (29,) township thirty-nine (39) north, of range thirteen (13) east of the third principal meridian; also a part of the southeast fractional quarter of section, (27,) in township thirty-nine (39) north, range fourteen (14) east, and better known and described as follows, viz: Beginning on the south line of said quarter section fourteen (14) chains and seventy (70) links east from the southwest corner of the said quarter section and running from thence north sixteen and a

half degrees (16½°) west five chains and a half; thence east, parallel with the south line of said quarter section, ten chains and forty-five and a half links, more or less, to Lake Michigan; thence southerly, along said lake, to the south line of the said quarter section; thence west to the place of beginning, saving and excepting that portion of the above-described tract heretofore sold and conveyed by said Johnson to the Illinois Central Railroad Company. Also the northwest quarter of the northwest quarter of section one, (1,) township thirty-nine, (39,) range thirteen (13) east of third principal meridian. That in said deed there was no consideration expressed,

but that the same was made and delivered under the said agreement,
98 and while Johnson was laboring under mistake of fact and relying upon the aforesaid false and fraudulent statements and representations of Carver. That the premises in the said deed described are very valuable, and were at the time said deed was made well worth twenty thousand dollars and upwards; that he received from said Carver the sum of two thousand dollars on said deed, and the balance of said four thousand dollars was arranged to be paid to him by said William Ruxton. That soon after making said deed Johnson went to Denver City, and did not return therefrom until November, A. D. 1862, when he again met Carver at Chicago, who then informed him there was a mistake in said deed not expressing consideration on its face, and requested said Johnson to rectify the same by giving a quitclaim deed to the defendant James Clapp. That he, Carver, had during the absence of Johnson become embarrassed in business, and to protect his property from being sold on execution by his creditors had placed it in the hands of his attorney, the said James Clapp.

That during all the time that Johnson was at Denver City he con-
99 tinued to do business with Carver and Carver & Co., a firm composed of said Benjamin F. Carver and one Coddington Billings; remitted them large quantities of gold to sell for him, and apply on business transactions he had with them. And that still having the utmost confidence in said Carver and Clapp for truthfulness and integrity, Johnson, on the 9th day of December, A. D. 1862, at the request and earnest solicitation of said Carver and Clapp, and upon the further assurances, statements, and representations of said Carver and Clapp as to the fairness of the transactions of said Carver with him before stated, (his wife joining with him,) for the nominal consideration of one dollar, made and delivered to said Clapp a quitclaim deed for the premises last described.

That by agreement said Clapp was to hold said deed in escrow and as security for the payment of said sum of two thousand dollars to be paid by the defendant Ruxton. That after the making of said last-named deed—Carver, Clapp, and Ruxton having combined and confederated together the bet-

ter how to cheat and defraud Johnson out of his property, and, if
100 possible, place the same beyond the reach of a court of equity—Ruxton informed Johnson that he would not pay the said two thousand dollars when due unless Johnson would then consent for Clapp to make him a deed for part of the said premises, that he was not liable in law, and Carver was insolvent and unable to pay.

That about the 15th day of December, A. D. 1862, the said Clapp, contrary to equity and in violation of the trust reposed in him, made and delivered to said Ruxton a deed for a portion of the premises so quitclaimed to him by said Johnson. That after being so informed by Ruxton and Clapp, and having applied to Carver and receiving no satisfaction or information from him in relation thereto, Johnson began to doubt the honesty, truthfulness, and integrity of Carver, Clapp, and Ruxton, and the statements of Carver in relation to the bank-book, and thereupon called upon Coddington Billings, the late copartner of Carver in the banking business, stated his fears, and

requested said Billings to search in his vault among the books and papers of Carver for said bank-book; that Billings did so, found it, and handed it to him. That upon a reference to the bank-book he found that Carver
101 did give him credit therein on the 26th day of April, A. D. 1860, for four thousand five hundred dollars as the amount of the said note, less five hundred dollars discounted therefrom. And that on the 11th of June, A. D. 1860, Carver gave him credit therein for ten thousand two hundred and forty-five dollars, cash deposited by Johnson with him, and that the whole amount drawn out by him of the amounts so deposited was nine thousand four hundred and sixty-two dollars and eighty-four cents, leaving to his credit on the 22d day of July, A. D. 1860, five thousand two hundred and eighty-two dollars and sixteen cents. And, upon information and belief, charges that on said 23d day of March, A. D. 1861, Carver was not the owner or possessed of the said note of five thousand dollars, but long before had transfered it to one Greene, who was still the owner and holder thereof, and that Carver and Clapp well knew that fact when, on said 23d day of March, A. D. 1861, they and each of them falsely and fraudulently stated and represented to him that the note and mortgage was still the property of Carver. That by means of his too great confidence
102 and reliance in Carver and Clapp for honesty, truthfulness, and fair dealing, and by means of the said false and fraudulent acts, statements, representations, claims, and pretences, and the deception practiced on him by Carver and Clapp with the intent and view to cheat and defraud him out of his money and property, Johnson is liable to pay the said note of five thousand dollars, and interest, to said Greene, or have his property sold and sacrificed by sale under said deed of trust while his title to all his real estate aforesaid is vested in said Clapp and Ruxton, and that Clapp and Ruxton had full knowledge, notice, and information, and aided, abetted, and assisted Carver in perpetrating on him the false, fraudulent, and unconscionable acts before stated, and that so it would appear if the said defendants would well and truly answer and state all they know in relation to the matters and things charged and praying.

To the end, therefore, that the said defendants, Benjamin F. Carver, James Clapp, and William Ruxton, may, if they can, show why your orator ought not to have the relief prayed for, and according to the best of their several and respective knowledge, remembrance, information, and belief, full,
103 true, direct, and perfect answers make to all and singular the matters and things hereinbefore stated and charged, their answers on oath being hereby, respectively, expressly waived and not required. And your orator therefore prays that your honor, upon a final hearing of this cause, will decree that the several conveyances by your orator to the said defendants, Benjamin F. Carver and James Clapp, made, and the conveyance by said James Clapp to the said defendant, William Ruxton, made, are void, and that the same were procured and brought about by the fraud and collusion of said defendants; and that your honor will further decree that the premises so conveyed by your orator to said defendants, Clapp and Carver, and the premises conveyed by said Clapp to said Ruxton are all now held in trust by said Benjamin F. Carver, James Clapp, and William Ruxton for your orator, and that they, and each of them, at some short day, to be named by your honor, reassign and transfer to your orator all their right, title, and interest in and to the lands and premises heretobefore by your orator in mistake deeded to the said Benjamin F. Carver and James Clapp, and by the said James Clapp, in fraud and by collusion, deeded to the said Wil-
104 liam Ruxton; and that the said Benjamin F. Carver, and the said James Clapp, as his assignee or trustee, account to your orator for

the balance that may be found due and owing your orator from said Benjamin F. Carver as aforesaid; and that the said defendants, Benjamin F. Carver and James Clapp, may be prohibited from making any assignment, conveyance, or transfer of the property heretofore deeded to them by your orator as aforesaid; and that the said defendant, William Ruxton, may also, in like manner, be prohibited from making any assignment, conveyance, or transfer of the property hereinbefore described as deeded to him by said James Clapp; and that your orator may have such further and other relief in the premises as the nature of his case shall require and as shall be agreeable to equity and good conscience.

And your petitioner further showeth that the said Benjamin F. Carver, James Clapp, and William Ruxton appeared and filed their several answers to said bill, and that the said William F. Johnson replied thereto; and the cause being at issue, the same was refered to the master of said court to take proofs in, and the proofs having been taken and closed by stip-
104*a* ulation, the case was set down for hearing, as by the said bill, answers, replications, and proceedings had thereunder, and to all of which your petitioner prays leave to refer and use, will more fully and at large appear.

And that your petitioner further showeth that on or about the 3d day of February, A. D. 1864, after the taking of the proofs and setting said cause down for hearing as aforesaid, your petitioner, for the consideration of sixty-seven hundred dollars, purchased of and from the said William F. Johnson all his right, title, and interest in and to the following described pieces, parcels, and tracts of land hereinbefore mentioned, which is to say, a part of the southeast fractional quarter of section twenty-seven, (27,) in township thirty-nine (39) north, range fourteen (14) east, and better known and described as follows, viz: Beginning, on the south line of said quarter section fourteen (14) chains and seventy (70) links east from the southwest corner of the said quarter section, and running from thence north sixteen and a half degrees ($16\frac{1}{2}°$) west five chains and a half; thence east, parallel with the south line of said quarter section, ten chains and forty-five and a half links, more
105 or less, to Lake Michigan; thence southerly, along said lake, to the south line of said quarter section; thence west to the place of beginning, saving and excepting that portion of the above-described tract heretofore sold and conveyed by said Johnson to the Illinois Central Railroad Company. Also, the northwest quarter of the northwest quarter of section one, (1,) township thirty-nine, (39) range thirteen (13) east of third principal meridian, and received of and from the said William F. Johnson a deed for the said premises, a copy whereof is hereto annexed, marked "Exhibit I," and to be taken and read as part of this petition, whereby your petitioner became and now is the equitable and rightful owner of the premises last described, and rightfully and lawfully entitled to the possession of the same and the rents, issues, and profits thereof.

And your petitioner further showeth that the said last-described premises are now wrongfully and unjustly withheld from him, and the rents, issues, and profits thereof received by the said defendant, William Ruxton, who fraudulently and unjustly pretends and claims to be the owner of
106 and entitled thereto by virtue of the quitclaim deed in said original bill mentioned and referred to, as of date December 15th, A. D. 1862, and made by said James Clapp to him, said Ruxton, whereas your petitioner, upon his information and belief, on the contrary, insists and charges the fact to be that the said deed was procured by fraud and deception of said Ruxton and his confederates, Carver and Clapp, and without any consideration whatever, as in said bill stated and charged, and that the same is therefore fraudulent and void and confers no title to or interest in the

said premises upon said Ruxton; and that all and every the claims and pretences of the said Ruxton in that respect made are false and fraudulent.

And your petitioner avers and shows that the said last-described premises, although unimproved, are very valuable, and, upon his information and belief, saith that the same are now worth more than the sum of twenty thousand dollars, and that a small portion thereof now rented by said Ruxton yield a yearly income, as your orator is informed and believe, of about fifteen hundred dollars per annum.

107 And your petitioner further showeth that said Ruxton now pretends and claims to have purchased the said last-described premises from the said Johnson, and paid him therefor the sum of four thousand dollars in money, and that he, said Ruxton, assumed the payment of said note and mortgage first in said original bill mentioned, and now held by one David R. Greene, of Massachusetts; and that said Johnson assented to and directed the said James Clapp to make him, said Ruxton, the quitclaim deed in said original bill mentioned as of date December 15th, A. D. 1862, (the said Clapp then having the legal title to said premises,) whereas your petitioner, upon his information and belief, saith and charges the fact to be that said Ruxton never bought the said described premises, or any part thereof, of or from said Johnson, in any manner or way whatever, and never paid, or agreed to pay, him therefor the sum of four thousand dollars, or any other sum or sums of money whatever, and never assumed, or agreed to assume, the payment of said note and mortgage, or any part thereof, and that said Johnson never sold, or agreed to sell, the said premises, or any part thereof, to said Ruxton, at any price or on any terms whatever; but that the

108 said deed was made and procured by the fraud and collusion of said confederates, Carver, Clapp, and Ruxton, without the knowledge or consent of said Johnson, and without any consideration whatever, as in said bill stated and charged.

And your petitioner further showeth that in order to protect his rights in the premises and prevent an abatement of this suit as to such rights, he is advised that it is necessary for him to bring himself before this honorable court by supplemental bill as a party complainant, and make the said Benjamin F. Carver, James Clapp, William Ruxton, and William F. Johnson parties defendants thereto. Your petitioner therefore prays that leave may be granted to him to file a supplemental bill against the said Benjamin F. Carver, James Clapp, William Ruxton, and William F. Johnson as defendants, to make him a party complainant therein to the extent of his interest, with proper allegations, setting forth at large the facts and matters before stated, with all necessary and incidental matters, and all proper interrogatories adapted thereto, and with such prayer for relief in the premises as may be proper. And your petitioner will ever pray, &c.

THOMAS P. AKERS,
By JNO. J. McKINNON,
his Att'y and Ag't.

MERRICK & McKINNON, *Sol's and of Counsel.*

109 UNITED STATES OF AMERICA,
State of Illinois, county of Cook, northern district of Illinois, ss:

Jno. J. McKinnon, having been duly sworn on his oath, says he is the agent and attorney of the above-named Thomas P. Akers, petitioner in this respect; that he has read the foregoing petition, and knows the contents thereof, and that the same is true of his own knowledge, except as to the

matters which are therein stated to be on information and belief, and as to those matters he believes the same to be true.

JNO. J. McKINNON.

Sworn to and subscribed before me this 2d day of March, A. D. 1864.

WM. H. BRADLEY, *Cl'k.*

[5 cent stamp.]

EXHIBIT "I."

This indenture, made this third day of February, in the year of our Lord one thousand eight hundred and sixty-four, between William F. Johnson, of Connecticut, party of the first part, and Thomas P. Akers, of New York, party of the second part, witnesseth, that the said party of the first
110 part, for and in consideration of six thousand seven hundred dollars ($6,700,) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged therefrom, has remised, released, sold, conveyed, and quitclaimed, and by these presents does remise, release, sell, convey, and quitclaim, unto the said party of the second part, his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following described lot, piece, or parcel of land, to wit: All that part of the southeast fractional quarter of section twenty-seven, township thirty-nine (39) north, of range fourteen (14) east, beginning on the south line of said quarter section fourteen (14) chains and seventy (70) links east from the southwest corner of said quarter section, and running thence north sixteen and a half ($16\frac{1}{2}°$) west five (5) chains and a half ($\frac{1}{2}$;) thence east, parallel with the south line of said quarter section, ten (10) chains and forty-five and a half ($45\frac{1}{2}$) links, more or less, to Lake Michigan; thence southerly, along said lake, to the south line of said quarter section; thence west to the place of beginning, excepting the portion of land sold to the Illinois Central Railroad Company.
111 Also the northwest quarter of the northwest quarter of section one, (1,) in township thirty-nine (39) north, of range thirteen (13) east of the third principal meridian. All of which said pieces, parcels and tracts of land are situate, lying, and being in the county of Cook and State of Illinois. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, rights, title, interest, and claims whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

And the said William F. Johnson, party of the first part, hereby expressly waives, releases, and relinquishes unto the said party of the second part, his heirs, executors, and administrators and assigns, all right, title, claim, interest, and benefit whatever in and to the above-described premises, and each and every part thereof, which is given by or results from all laws of this State pertaining to the exemption of homesteads.

And the said party of the first part, for himself and his heirs, executors, and administrators, doth covenant, promise, and agree to and with the said party of the second part, his heirs, executors, administrators, and
112 assigns, that he hath not made, done committed, executed, or suffered any act or acts, thing or things, whatsoever whereby, or by means whereof, the above mentioned and described premises or any part or parcel thereof now are, or at any time hereafter shall or may be, impeached, charged, or incumbered in any manner or way whatsoever.

In witness whereof, the said party of the first part hereunto set his hand and seal the day and year first above written.

W. F. JOHNSON. [SEAL.]

[$10 stamp.]

Signed, sealed, and delivered in presence of—
JOHN J. MCKINNON.

STATE OF ILLINOIS, *Cook County, ss:*

I, William D. Kerfoot, a notary public in and for the city of Chicago, in said county, in the State aforesaid, do hereby certify that William F. Johnson, who is personally known to me as the same person whose name is subscribed to the foregoing instrument of writing, appeared before me this day in person and acknowledged that he signed, sealed, and delivered the said instrument of writing as his free and voluntary, act for the uses and purposes therein set forth.

Given under my hand and notarial seal this eighth day February, A. D. 1864.

[SEAL.] W. D. KERFOOT.

113 STATE OF ILLINOIS, *Cook County, ss:*

The within deed was filed for record in the recorder's office of Cook County on the tenth day of February, A. D. 1864, at o'clock m., and duly recorded in Book W 68 of Deeds, on page 447.

WM. CHURCH, *Recorder of Cook County.*

Endorsed: Filed March 2d, 1864.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the seventh day of March, A. D. 1864, came the said petitioner, Thomas P. Akers, by his solicitors, and filed in said clerk's office his bond for costs in said entitled petition, which is in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

Circuit court, U. S. northern dist. Ills., term A. D. 1864.

THOMAS P. AKERS
vs.
BENJAMIN F. CARVER, JAMES CLAPP, WILLIAM RUXTON, AND WILLIAM F. JOHNSON. } In ch'y, sup. bill.

114 I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiff of any costs ordered or adjudged to be paid by him, and hereby agree and stipulate that execution may issue against my property for any costs taxed against him.

Dated this 7th day of Mar., A. D. 1864.

JNO. J. MCKINNON.

Endorsed: Filed March 7th, A. D. 1864.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the seventh day of March, A. D. 1864, a writ of subpœna was issued out of said clerk's office, directed to the aforesaid defend-

ants and William F. Johnson, and delivered to the marshal of the northern district of Illinois to execute, which said writ, together with the memorandum, and also the return of the marshal endorsed thereon, are in the words and figures following, to wit:

115 UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The United States of America to Benjamin F. Carver, James Clapp, William Ruxton, and William F. Johnson, greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in said district, on the first Monday in the month of April next, to answer the supplemental bill of complaint of Thomas P. Akers, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States of America, at Chicago aforesaid, this
116 this seventh day of March, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-
[SEAL.] eighth.

WM. H. BRADLEY, *Clerk.*

[50-cent stamp.]

Memorandum.—The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complaint will be taken against them as confessed, and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Know all men by these presents that I have appointed, and by the presents do appoint, Spencer B. Webb my true and lawful deputy to execute the annexed writ, Thomas P. Akers *vs.* Benjamin F. Carver *et als.*, and to make true return theron according to law.

J. R. JONES, [SEAL.]
United States Marshal of the northern district of Illinois.

117 I have on this seventh day of March, A. D. 1864, served the within writ by leaving a copy thereof in the hands of each of the within-named William Ruxton and William F. Johnson; and afterwards, to wit, on the eighth day of March, A. D. 1864, served the within writ by leaving a copy thereof in the hands of Minnie Poll, at the usual place of abode of the within-named James Clapp, and explaining to her the meaning thereof, she being a member of said Clapp's family, and a white person above the age of eighteen years; and on the 11th day of March, A. D. 1864, by direction of complainant's solicitors, I served a copy of the within writ upon John V. Lemoyne, by delivering the same to him personally.

J. R. JONES, *U. S. Marshal,*
By SPENCER B. WEBB, *Special Deputy.*

Endorsed: Filed April 7th, A. D. 1864.

WM. H. BRADLEY, *Clerk.*

118 On this day, to wit, the fifth day of March, A. D. 1864, in the record of the proceedings in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER *et al.* } Chancery.

Now comes Thomas P. Akers, by Merrick & McKinnon, his solicitors, and thereupon comes on to be heard the motion for leave to file a supplemental bill on the petition heretofore filed, which motion after argument the court sustains, and grants leave to file the same so far as may be necessary to make Thomas P. Akers a party complainant.

And afterwards, to wit, on the eighth day of March, A. D. 1864, in the record of the proceedings in said court in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER *et al.* } Chancery.

119 Now comes Thomas P. Akers, by Merrick & McKinnon, his solicitors, and files his supplemental bill under the leave heretofore given of the fifth day of March inst.

On the same day, to wit, on the eighth day of March, A. D. 1864, came the said complainant, by his solicitors, and filed in said clerk's office his amendment to his bill herein, which is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA:

In the circuit court of the United States of America for the eighth circuit and northern district of Ill's.

WILLIAM F. JOHNSON, compl't,
v.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON, def'ts. } In chancery.

And your orator, William F. Johnson, further showeth, as amendment to his said bill of complaint, and by leave of the said court for that purpose,
120 and the consent of the said defendants, that on or about the 3d day of February, A. D. 1864, for and in consideration of the sum of sixty-four hundred dollars, lawful money of the United States, to him paid, he remised, released, sold, conveyed, and quitclaimed to Thomas P. Akers, of New York City, by his certain deed of that date, all his right, title, interest, claim, and demand in and to the following described premises, lying and being in the county of Cook, and State of Illinois, to wit: All that part of the southeast fractional quarter of section twenty-seven, township thirty-nine north, of range fourteen east, beginning on the south line of said quarter section fourteen chains and seventy links east from the southwest corner of said quarter section, and running thence north sixteen and a half degrees west five chains and a half; thence east, parallel with the south line of said quarter section, ten chains and forty-five and a half links, more or less, to Lake Michigan; thence southerly, along said lake, to the south line of said quarter section; thence west to the place of beginning, (excepting the
121 portion of the land sold to the Illinois Central Railroad Company;) also the northwest quarter of section one, in township thirty-nine north, of range thirteen east of the third principal meridian. And that thereafter, on or about the eighth day of February, A. D. 1864, he acknowledged in due form of law the execution of said deed, which said deed is now in the

custody or under the power and control of the said Thomas P. Akers, and your orator avers that he has now no interest, claim, or demand in, to, or against the said premises of any nature or kind whatever, and has no claim or demand against the said Akers therefor.

W. F. JOHNSON.

MERRICK & MCKINNON, *Sol's, &c., for Comp't.*

STATE OF ILLINOIS, *County of Cook, ss:*

William F. Johnson, having been first duly sworn, says he is the complainant in the original bill and said amendment named, that he has read the said amendment and knows the contents thereof, and that the same
122 is true in substance and in fact. And further says not.

W. F. JOHNSON.

Sworn to and subscribed before me this 8th day of March, A. D. 1864.

WM. H. BRADLEY, *Clk.*

[5-cent stamp.]

Endorsed: Filed March 8th, 1864.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the ninth day of March, A. D. 1864, in the records of the proceedings in said court in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON
v.
BENJAMIN F. CARVER *et al.* } Chancery.

Now comes on to be heard the motion of the complainant, by his solicitors on affidavit filed, for leave to file a supplemental bill herein, which
123 after argument, is taken under advisement.

And afterwards, to wit, on the eleventh day of March, A. D. 1864, in the record of the proceedings in said court in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON
v.
BENJAMIN F. CARVER *et al.* } Chancery.

Now come the parties by their respective counsel, and by leave of the court and with the consent of the defendants' counsel, the plaintiff has leave to amend his bill, the defendants Clapp and Ruxton agreeing to file their answers to the amendment and the plaintiffs waiving the answer of the defendant Carver. And thereupon the complainant's solicitor comes, and by leave of the court withdraws his motion, heretofore entered, for leave to file a supplemental bill.

124 On this day, to wit, the fifteenth day of March, A. D. 1864, came the said defendants William Ruxton and James Clapp, and filed in said clerk's office in said entitled cause their answers to the amendment allowed March 11th, A. D. 1864, and embodied in the original bill of complaint on page .

United States circuit court, northern district of Illinois.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON. } In chancery.

The answer of William Ruxton, one of the defendants, to the amendment to the said complainant's bill of complaint, made March 11th, 1864.

This defendant, further answering, denies that the payment of the sum of

two thousand dollars for the first payment to said complainant, alleged in bill of complaint to have been paid by said Carver, was paid by said Carver by a check upon this defendant. On the contrary, this defendant alleges
125 that said Carver never had any money on deposit with or in the possession of this defendant. But this defendant says that the payment of two thousand dollars, which is alleged in said bill as having been arranged to be paid by this defendant, was paid as follows: On or about the 9th day of December, 1862, this defendant saw said complainant Johnson and said Carver, and said Carver then stated, in the presence of this defendant and of said complainant Johnson, that the balance to be paid to said Johnson was two thousand dollars, and for this sum he had given, or would give, an order to said Johnson on this defendant, which order this defendant will produce at the hearing as your honor may direct. And this defendant then stated to said Johnson that he would pay such order upon receiving a deed for the premises. The said Johnson said certainly, this defendant should have a deed upon making such payment. That afterwards this defendant notified said Clapp that he was prepared to make such payment upon receiving a deed of said premises; that afterwards, on the 15th day of December, 1862, the said Johnson came to the office of this defendant in company with
126 said Clapp, and this defendant then and there stated to said Johnson that he was ready to pay said balance of two thousand dollars upon receiving a deed of said premises, and the said Johnson then stated that this was entirely satisfactory, and directed said Clapp that as this defendant was prepared to make such payment, he, the said Clapp, would at once convey said premises to this defendant. Whereupon this defendant paid to said Johnson the said sum of two thousand dollars.

And this defendant charges that said Johnson well knew that said payment was the last payment of the whole balance due to him, and did not at that time, or at any time since, either directly or indirectly, claim that there was any other or further sum due to him from this defendant; and when this defendant claimed that this defendant was entitled to a deed upon the payment of said balance the said Johnson fully assented and agreed to the same.

WM. RUXTON.

J. V. LE MOYNE, *Sol's and of Counsel.*

UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

William Ruxton, being duly sworn, deposes and says that he is one
127 of the defendants in the above-entitled suit, that he has read the foregoing answer subscribed by him and knows the contents thereof, and that the same is true in substance and in fact.

Subscribed and sworn to before me this 14th day of March, A. D. 1864.

WM. H. BRADLEY, *Clk.*

[5-cent stamp.]

Endorsed: Filed March 15th, '64.

WM. H. BRADLEY, *Clk.*

In the circuit court of the United States for the northern district of Illinois, in chancery.

The answer of James Clapp, one of the defendants, to the amended bill of complainant, W. F. Johnson, which amendment was made 11th March, 1864.

This defendant, saving all benefit of exception, for answer, saith that he

has no knowledge, information, or belief of the payments or the manner of payments of said Carver to said Johnson of the consideration money of the said premises other than is denied from the pleadings and evidence in
128 the case; that he does not know whether the said Carver ever gave the said Johnson a cheque for two thousand dollars upon said defendant Ruxton, or upon any other bank or banker, or whether he ever gave him a cheque or order for any sum as consideration money for said premises, and that the first knowledge or information he has in the premises of such payments is derived from the amended bill and answer of Ruxton this day made.

But this defendant, further answering, says that on or about the 15th day of December, 1863, the said defendant Ruxton informed this defendant that he was prepared to pay the balance due, two thousand dollars, on the purchase of said premises, upon receiving a deed for the same; that this was the first, and, with one other exception hereafter mentioned, the only conversation this defendant ever had with said Ruxton upon the matter in controversy in this suit prior to the filing of the bill of complaint; that both conversations inclusive did not exceed five minutes in length; that the substance and language of the first conversation was as above given; that this defendant informed said Johnson of what said Ruxton had stated; that, at
129 said Johnson's request, he then went with said Johnson to said Ruxton's office or bank, and said Ruxton then and there stated to said Johnson and to this defendant that he was ready to pay the said two thousand dollars upon receiving a deed of the said premises. Said complainant thereupon expressed his satisfaction therewith, and directed this defendant to make the deed of the said premises forthwith to said Ruxton, which this defendant afterwards did in good faith, believing he was carrying out the wishes, as he was the directions, of the said Johnson and the said Ruxton; that at the interviews named above, and which were the only ones this defendant ever had with said Ruxton on the matter in question prior to this suit, said Ruxton claimed he was entitled to a deed of said premises upon said payment of $2,000, and which this defendant understood to be fully admitted by said Johnson, he, the said Johnson, not claiming that he was to receive any other or further sum from said Ruxton.

JAMES CLAPP.

In United States circuit court for northern dist. of Illinois.

STATE of ILLINOIS, *Cook County:*

James Clapp, being duly sworn, deposeth and saith that the fore-
130 going answer to the amended bill of W. F. Johnson, complainant, is true to the best of this deponent's recollection and belief.

Endorsed: Filed March 15, 1864.

WM. H. BRADLEY, *Clk.*

On the same day, to wit, the fifteenth day of March, A. D. 1864, came the said complainant by his solicitors, and filed in said clerk's office, in said entitled cause, his replication to the answers of William Ruxton and James Clapp to the amendment of March 11th, A. D. 1864.

Replication to answer.

UNITED STATES OF AMERICA, ss:

Circuit court of the United States for the eighth circuit and northern district of Illinois, in chancery sitting.

WILLIAM F. JOHNSON, original complainant,
vs.
BENJAMIN F. CARVER, JAMES CLAPP, WILLIAM RUXTON, defendants. } Bill, &c.

131 The replication of the above-named complainant in the original bill in said cause, and nominal complainant as to the matters and things set forth in the first amendment to said original bill, to the answers of the above-named defendants, James Clapp and William Ruxton, severally filed in said cause to the last amendment made to said original bill.

This repliant, saving and reserving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that he will aver and prove his said amended bill to be true, certain, and sufficient in law to be answered unto, and that the said answers of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed, and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said original bill he has already prayed.

MERRICK & McKINNON,
Solicitors for Complainant.

132 Endorsed: Filed March 15, 1864.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the sixteenth day of March, A. D. 1864, in the record of the proceedings in said court in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON
v.
BENJAMIN F. CARVER *et al.* } Chancery.

Now come the parties by their solicitors, and on application upon affidavits filed herein the complainant has leave to examine E. G. Hooke before the master touching the amendment made to the bill on the eleventh inst., and by agreement such examination to be made to-morrow, and to be taken at the expense of the complainant.

The following is the testimony introduced and read in this cause:

COMPLAINANT'S TESTIMONY.

133 Circuit court of the United States of America, northern district of Illinois, in chancery.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER *et als.* }

Pursuant to an order of the said court made in the above-entitled cause, made on the seventh day of September, A. D. 1863, (Rule Book, page 42,)

wherein and whereby it was referred to J. T. Moulton to take the evidence in the said cause, I report the same to the court.

I, the said J. Tilden Moulton, master in chancery of said court, appointed as aforesaid, do hereby report that on the twenty-seventh day of November I was attended by Mr. McKinnon, solicitor for complainants, and Mr. Le Moyne and Mr. Clapp, solicitors for the respondents, and by Coddington Billings, a witness introduced by complainant, was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

1 int. What is your name, age, residence, and occupation in life?

Ans. Coddington Billings; twenty-nine years; Chicago. I have been in the banking business, and am now engaged in winding up the affairs of B. F. Carver & Co. I have been for nearly two years—or, properly, since May, 1862, and previous to that time from November, 1860, I was a member of the firm of B. F. Carver & Co., which was dissolved May 1, 1862.

134 2 int. This is a suit wherein Wm. F. Johnson is compl't and Benjamin F. Carver, James Clapp, and Wm. Ruxton are def'ts. Do you know the parties, or any of them? If so, how long, and where have you known them respectively?

Ans. I am acquainted with all the parties. I first became acquainted with Mr. Johnson in the winter or spring of '60–'61. I think it was the spring of '61. My first acquaintance with Mr. Carver was, I think, in the month of October, 1860; with Mr. Ruxton, I think, in the spring or summer of '61; with Mr. Clapp my acquaintance commenced, I think, in the winter of '60–'61.

3 int. Are you acquainted with the handwriting of B. F. Carver?

Ans. I am.

4 int. Look at the book or paper writing marked by the master Exhibit A, now shown you, and state if you know in whose handwriting the same is, and whether you ever saw the same before.

Ans. I do not know personally, or did not see the entries made in the book referred to, but should think the entries were made in the handwriting of B. F. Carver. I think I have seen the book before.

5 int. Please state when and where you first saw this book. Answer fully.

Ans. I think I first saw the book in the month of April, '61, or thereabout, lying in the office of B. F. Carver & Co., together with another pass-book with said firm in account with said firm. I cannot recollect that my

135 attention was especially called to this book, except from the fact of the lettering on the outside of cover, the same being printed with a pen in account with B. F. Carver. I did not notice the contents of the book; did not see the entries in the book at that time.

6 int. When, and under what circumstances, did you next see this book? and if you know, state how the same came to leave the office of B. F. Carver & Co. Please answer fully and at large.

Ans. I think the next time my attention was called to the book, or that I have any recollection of noticing the same particularly, was in December, 1862. I think the 18th of December, if my recollection serves me right. Mr. Johnson called at the office to arrange his balance, and get certain collaterals held by B. F. Carver & Co. at that time. I had seen Mr. Johnson in the street the day previous, and he had agreed to call at our office the following morning. He at that time stated that he had previously left a pass-book with us or on our table, describing the same as being of a different shape and size from his other book with the firm, and described the lettering on the outside of the book as being entirely different, the same being lettered with a pen instead of with type, and that it was lettered W. F. Johnson in

account with B. F. Carver. I did not at that time think that we had said book, as I had no recollection of having seen it for some time. The last time I saw it it was lying, as before stated, on the desk, on Mr. Carver's
136 desk, with his other pass-book. They both lay there for some time. Mr. Johnson desired me to look among our books for the same, and upon so doing found the same among a package of pass-books of B. F. Carver & Co. in account with sundry individuals, and handed the same to him.

7 int. When and where did you next see the book?

Ans. I have no recollection of having seen the book since that date till to-day.

8 int. Look at the book or paper writing marked by the master Exhibit B, and now shown you, and state if you know what the same is, and whether the balance of $108 65 appearing thereon has been paid.

Ans. The book referred to was B. F. Carver & Co.'s pass-book, in account with W. F. Johnson. The balance referred to has been paid. It was paid, I should say, in December or January '62 or '63, or about that time. It was paid by B. F. Carver.

9 int. You state that the balance of $108 65 referred to was paid to the firm of B. F. Carver & Co. by B. F. Carver. Will you now please state to whom and how B. F. Carver paid the same, and what, if anything, he said about so doing at that or any other time.

Ans. I think he left the amount with the bookkeeper during my absence, to be handed to me. He had previously stated to me that he would hand me the amount.

10 int. Do you know what is the subject of controversy between
137 these parties? And have you had any conversation with the defendants, or any of them, in relation thereto? If yea, state all that you know in this respect.

Ans. I cannot state distinctly. I have a general idea only, from a cursory reading of the bill. I have had no conversation with any of the defendants in relation thereto, so far as I am aware, except that Mr. Carver mentioned to me at one time that a suit had been commenced, but I recollect no particulars of his remarks concerning the merits or details of the case.

CODDINGTON BILLINGS.

Subscribed Nov. 29, 1863.

J. T. MOULTON.

Cross-examined by Mr. Le Moyne, Nov. 30, 1863.

1 c. int. At the time Johnson got from you the book marked Exhibit A state with whom he alleged he left that book when he left it at the office.

Ans. I think he stated to have left it with Mr. Carver, or on Mr. Carver's desk, in our office, at the same time of leaving his other book.

2 c. int. For what purpose did he say these books had been left?

Ans. I think he stated them to have been left for the purpose of being written up.

3 c. int. Did he speak at that time of having left any valuable papers with the book?

Ans. I cannot say positively that he did. He may have mentioned the fact.

138 4 c. int. Did you have any correspondence with Johnson while he he was at Pike's Peak or Denver City?

Ans. I did, or we did.

5 c. int. State if Johnson's account with B. F. Carver & Co. was not at several times during his absence considerably overdrawn.

(Obj. to.)

Ans. I think it was overdrawn, but how largely I cannot state from memory.

6 c. int. State whether or not you, in behalf of B. F. Carver & Co., wrote to Johnson while at Denver City in regard to any amount due from him to the firm. If so, how often did you write and what answers did you receive?

(Obj. to.)

Ans. I did write to him on behalf of the firm a number of times, I cannot say how often, regarding amount or amounts due to the firm. His reply or replies were, so far as I now recollect, that he would ship dust (gold-dust) from time to time to make his account good.

(Mr. McKinnon here calls upon Mr. Le Moyne to produce, at the next examination, all the letters written by the compl't Johnson to the def't Carver, or to B. F. Carver & Co., between July, 1860, and December, 1862, also the original mortgage or deed of trust from compl't Johnson and all original deeds referred to in the bill as having been made by the compl't Johnston.)

By agreement of parties further examination is postponed to to-morrow morning at 10 o'clock.

J. T. MOULTON.

TUESDAY, *Dec.* 1, 1863.

Resumed the examination of Mr. Billings, pursuant to adjournment.

7 c. int. Look at the letters signed W. F. Johnson now shown to
139 you, and state about the time they were received and also if the letters were received in answer to letters that had been written by you. If so, what was the nature of the letters written by you?

Ans. The letters were received in the usual course of mail, some of them directed to B. F. Carver and by him handed to B. F. Carver & Co. and others directed to B. F. Carver & Co. Some of these, I cannot if all, were in answer to letters written by B. F. Carver & Co. I think, however, some of them, or a few of them, are in answer to letters from Mr. Carver to Mr. Johnson, though I cannot state positively. The nature of the letters written by us were requesting payment of amount or amounts due us, and in some cases merely acknowledgments, I think, of letters received from him.

8 c. int. State if these are all the letters received from Johnson by B. F. Carver & Co or by B. F. Carver to your knowledge?

Ans. I cannot state positively, but, so far as my knowledge extends, they are. I looked through our files for all letters between the dates called for.

9 c. int. State if Johnson borrowed any money from B. F. Carver & Co. If so, when and how much? on what time and when the same was paid?

(Obj. to.)

Ans. I think he did; yes, he did. I think it was on or about the twelfth of April, 1861, a note of his was discounted for the sums of $7,384 00; I think at four months; the same was paid during the latter part of '61 and the year '62, I think the early part of the year '62; the endorsements will show.

140 *Direct.*

WEDNESDAY, *December* 2, 1863.

Re-examined by Mr. McKinnon:

11 int. Look at the paper writing or note now shown you by compl't's counsel, and marked by the master "Exhibit C," and state whether it is the same mentioned in your answer to c. int. 9; and, if so, please state when and by whom the same was delivered to compl't.

Ans. It is. I delivered the same to Mr. Johnson on or about the 18th of December, 1862.

12 int. At what time did the firm of B. F. Carver & Co. commence to do business with the compl't and when did their business relations cease. State as nearly as you can.

Ans. The first entry on the pass-book with the firm appear on the 14th of January, 1861. I think business ceased some time during the fall or winter, 1862, in December I think.

13 int. State as nearly as you can what amount of business transactions were had between the compl't and B. F. Carver & Co. within the time you mentioned.

Ans. I should think about $9,000 or $10,000, as nearly as I recollect.

14 int. Were the letters referred to in c. int. 7 in relation to business transactions between the compl't and the firm of B. F. Carver & Co., or were they in relation to business transactions between the compl't and def't B. F. Carver?

Ans. I think the most of them relate to transactions with the firm of B. F. Carver & Co., but reference, I think, is made in some of them to
141 transactions which I suppose were with Mr. Carver.

15 int. Will you please to state how it is that some of these letters are addressed to B. F. Carver individually and not to the firm of B. F. Carver & Co., since they mainly refer to business with that company?

Ans. I cannot say. I suppose it to have arisen from the fact of his former correspondence having been with Mr. Carver individually, and his early transactions with the firm through him.

(Mr. Le Moyne objects to witness stating any suppositions.)

16 int. State if you know when and by whom the compl't was informed of the formation of the firm of B. F. Carver & Co., and whether he was instructed by either of the members of that firm to address his correspondence to the firm. If so, by whom and when he was so instructed and what was the reason for so doing?

Ans. I cannot say who first advised him of the formation of the firm or where he was so advised or the time he was so advised. I at one time requested him to make his remittances on firm account to B. F. Carver & Co., as Mr. Carver was frequently absent, and remittances to him, if by draft, would require his endorsement and would thus cause delay, and shipments would have to await his order.

CODDINGTON BILLINGS.

Subscribed Dec. 2, 1863.

J. T. MOULTON.

142 MONDAY, *Nov.* 30, 1863.

Resumed the examination pursuant to adjournment. And Charles H. King was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and did thereupon, upon examination, depose, testify, and say:

1 int. What is your name, age, residence, and occupation in life?

Ans. Charles H. King; age, 30; Chicago; a lawyer.

2 int. This is a suit wherein William F. Johnson is complainant and Benjamin F. Carver, James Clapp, and William Ruxton are defendants. Do you know the parties or either of them? If yea, how long and where have you known them respectively?

Ans. I know them all; have known them from five to eight years; perhaps all of them.

3 int. Have you done any business, professionally or otherwise, with the

defendants or either of them prior to December 25th, 1862, for the plaintiff? If yea, state when, where, and with whom.

Ans. Some time in the summer, I can't state accurately the date, 1862, I called on Mr. Carver, at the request of Major Johnson, who was then at Pike's Peak, for certain papers and a bank-book which he claimed to be in the possession of Mr. Carver.

4 int. State all that was said by Mr. Carver and took place between you and him on that occasion.

Ans. The papers referred to in my answer to the next preceding
143 interrogatory were title deeds, or papers claimed to have been held by Mr. Carver for Major Johnson. Mr. Carver, when I called upon him, stated to me that he had deeded certain property which these title-deeds conveyed to him to James Clapp, alleging as a reason that he was being sued at the time, and that any judgment that might be recovered against him would become a lien upon the property if he still held the title to it. At the same time I told him that Major Johnson requested me to ask him for a bank-book which he claimed Mr. Carver had in his possession. I told Mr. Carver at the time that Major Johnson had authorized me to lease the property referred to for a term of years and that he wished to get the title back in him. I will state that previous to this time I had been in correspondence with Major Johnson about the leasing this property for him to parties in this city, and had also written him about a mortgage of some $5,000 00 given by him, which a man by the name of Green, I think, from the East, New England, some where, claimed to own and hold against the property, and which Green claimed had been due for some time, and was unpaid. I stated to Mr. Carver, likewise, that Mr. Johnson had written to me in answer to my letter that he owed no such mortgage and that the property was or should be free from incumbrance; that Mr. Carver had a balance of about $5,000 00 of his,
Johnson's, money in his possession, and that he, Johnson, was
144 credited with the money in a bank-book held by Mr. Carver, and which bank-book he requested me to get. Mr. Carver stated to me that Major Johnson did owe the money on the Green mortgage, and also stated that he owed Mr. Johnson nothing, but that the bank-book referred to was probably among the papers of B. F. Carver & Co. if there was such a book in his possession or their possession, which he didn't recollect at all. I afterwards saw Mr. Carver, and he told me that he had looked for the book but did not find it. He ridiculed the idea of owing the major, and said he must be as crazy as an old loon to claim it. I didn't get the book or papers.

5 int. Where is the property situate to which you refer in your last answer?

Ans. It is five acres, I think, or thereabouts, at or near Cottage Grove, on the lake shore.

Cross-examined by Mr. Le Moyne.

1 c. int. Were not the papers which Johnson requested you to get from Carver certain deeds which Johnson had made to Carver of his, Johnson's, property?

Ans. They were.

2 c. int. Did not Carver at that time tell you that he had conveyed all of this property to Clapp for Johnson's protection?

Ans. That is the substance of what he said.

3 c. int. Did you advise Johnson of what Carver said in this
145 respect?

Ans. I did.

4 c. int. Were you, at the time of the interview with Carver, acting as the attorney of Johnson?

Ans. I cannot say that I was. I was acting more as the friend of the major than as attorney. I did it at his request.

5 c. int. Did Johnson ever express any dissatisfaction with the conveyance by Carver to Clapp?

Ans. I don't know that I ever heard him say anything about it.

C. H. KING.

Subscribed Nov. 31, 1863.

J. T. MOULTON.

Mr. Billings was further examined subsequently on the same thirtieth day. (See adjournment at foot thereof.)

146 And on said first day of December Nicholas P. Iglehart was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and thereupon, upon examination, did depose, testify, and say:

1 int. What is your name, age, place of residence, and occupation in life?

Ans. Nicholas P. Iglehart; fifty-two years; Chicago; real estate dealer.

2 int. How long have you lived in Chicago and been engaged in your present business?

Ans. Since 1851; and in the spring of '52 commenced my present business.

3 int. This is a suit wherein Wm. F. Johnson is compl't and Benj. F. Carver, James Clapp, and Wm. Ruxton are def'ts. Do you know the parties or any of them? If yea, how long and where have you known them, respectively?

Ans. I know them all; became acquainted with compl't Johnson in May, 1837, at the city of New Orleans; the def'ts I have known in Chicago from about 1856.

(Mr. McKinnon here calls upon Mr. Le Moyne to produce the deeds he called upon him last evening to produce. Mr. Le Moyne produces the deed from Mr. Clapp to Mr. Ruxton and says he has no other deeds to produce, that he has not seen any of the other def'ts, Mr. Carver being out of town.)

147 4 int. Do you know the premises in Cook County described as "the undivided one half of the southwest quarter of section twenty-nine, in township thirty-nine north, of range 13 east of 3d p. m. Also a part of the southeast fractional quarter of section twenty-seven, township 39 north, of range 14 east, beginning on the south line of said quarter section 14 chains and seventy links east from the southwest corner of said quarter section and running thence north sixteen and a half degrees west, five chains and a half; thence east, parallel with the south line of said quarter section, ten chains and forty-five and a half links, more or less, to Lake Michigan; thence south, by and along said lake, to the south line of said quarter section; thence west to the place of beginning, saving and excepting the portion of land sold to the Illinois Central Railroad Company. Also the northwest quarter of the northwest quarter of section one in township 39 north, of range 13 east of 3d p. m.?"

Ans. I know the three pieces.

5 int. How long have you known, and what was the value of the several pieces or parcels of property referred to in December 1862? and what is the present value of the same?

(Obj. to.)

Ans. I have known the piece in the SE. fractional quarter of 27, 39, 14 since 1851; the other two pieces since about July, '52. The value of the piece first described, in Dec. '62, being 80 acres, worth $4,800. The

148 piece second described as containing 5 50-100 acres, $12,000 at the date named. The 40 acres described last, $6,000 at the date named. I value them now, the first piece, $6,000; the second piece, $16,500; the third piece at $7,000.

6 int. Did you in the months of November or December, 1862, have any conversation with the def't James Clapp about the purchase or sale of any of the pieces of land above mentioned? If yea, state fully where the same took place, and give the conversation as nearly and fully as you can.

Ans. About the time named I was desirous of purchasing a piece of property described as the second or No. 2 in the list, and spoke to Mr. Clapp on that subject. There was a partial offer made by him to me for the piece for the sum of $6,000, at which price I was very anxious to get it, but but failed to close it with him. I was anxious to buy it at a little less than the sum named and had several brief conversations with Mr. Clapp about it, offering him $5,500 for it at one time, and at one or more interviews increasing that bid up a few hundred dollars. The last conversation I had with him was at his house, on the north side, Mr. Clapp being on the eve of leaving for the East. I there learned that the sale could not be then closed, some other disposition having been made of it, as I then learned from Mr.
149 Clapp. I never had any conversation in relation to the other pieces with reference to their purchase with Mr. Clapp.

7 int. Did Mr. Clapp, in the conversations mentioned, state to you what disposition had been made of the piece of property which you desired to purchase? If yea, state what he said to you fully and entirely in that respect.

Ans. I don't think he informed me.

8 int. Did he state to you, or intimate to you in any way, whether the disposition made of the property referred to was of a permanent nature, or did he state, or intimate to you in any way, that he could at some future time arrange with you about it? If yea, state all that took place between you and him in this respect.

(Obj. to.)

Ans. He said he couldn't make any definite arrangements about the property for about 30 days; that he was going away to New York; expected to return about that time; something might be done then with reference to a sale through me. We had other conversation at that time about other property, not any of these others, however, described here.

9 int. Did he give you to understand by words, or otherwise, that the disposition which he told you had been made of the property was not of a permanent nature? If yea, state what he said and how he gave you so to understand.

(Obj. to.)

Ans. I can't give the exact words of the conversation; I got the impression from the whole of it, however, that Mr. Clapp still controlled it,
150 but had made some temporary arrangement with reference to it in the way of security, which would debar him from disposing of it for some 30 days.

10 int. State as near as you can when the interview with Mr. Clapp, last referred to, took place.

Ans. From the fifteenth to the eighteenth of December, 1862.

11 int. Did Mr. Clapp, in any of the interviews mentioned, state to you how and in what capacity he held the title to the property referred to? If yea, state all he said in that respect.

Ans. I don't think we ever conversed specially on that subject.

12 int. Did you ever have any conversations with Mr. Clapp about the premises referred to at any time after December, 1862? If so, state the same as fully as you can.

Ans. I don't think I ever had any conversation with him since about this property.

13 int. Did you in the months of November or December, 1862, have any conversation with the def't Wm. Ruxton about any of the property in the bill and your answer to int. 4 mentioned and referred to? If yea, state when, where, and all that took place between you in that respect.

Ans. I had some conversation with Mr. Wm. Ruxton about the piece second described in int. 4 purporting in the bill to contain 5 53-100 acres, about the 18th of December, 1862, and after Mr. Clapp had left for
151 the East I discovered on record a conveyance from said Mr. Clapp to said Mr. Ruxton of the said piece of property that I wanted to buy. The idea struck me that I might buy it of Mr. Ruxton, and I made a partial examination of the title and discovered some errors in one or more deeds in the claim of title, and I called on Mr. Ruxton at his banking office; told him that I had been negotiating with Mr. Clapp for the purchase of this five 53-100 acres of ground, and I had just found that Mr. Clapp had conveyed the premises to him; that I should still like to by it, and that I had made a partial examination of the title, and told him of the defects in the two deeds, which I should require corrected if I purchased it, and advised him to have them remedied at once for his own safety. He asked me if I would undertake to do it, and what he must do; I told him my willingness to serve him in the matter, if I could, but advised him (of what he already knew) that Johnson and myself were not on good terms, and all I could do for him would be to draw a deed for Johnson and wife to execute to him to cover the omissions or deficiencies in the previous conveyances, which deed I had drawn for him in my office, and gave it to Mr. Ruxton, and he informed me that he would get Mr. E. G. Hooke to have it executed for him, he being an attorney-at-law and having an office with Mr. Clapp. I impressed it upon Mr. Ruxton the importance of having that deed signed as if
152 Johnson discovered any points to his advantage he might refuse to give any additional deed, and probably would. At a subsequent interview on that subject, about the same time, with Mr. Ruxton, and when it seemed doubtful whether Mr. Hooke could procure the execution of the deed entrusted to him, Mr. Ruxton wished to know what I thought of the fact that he had paid to Johnson himself some $2,000 as purchase-money for the premises conveyed to Ruxton by Clapp, and which conveyance by Clapp Johnson had assented to, and in fact the conveyance had been made by Clapp on Johnson's own order. I gave him my opinion of the case as stated by him, and with one or two subsequent interviews on this subject, at which I ascertained that Johnson refused to sign the deed I wrote, my transaction with Mr. Ruxton on the subject ceased.

By agreement of parties the further examination is postponed to to-morrow morning at 9½ o'clock.

J. T. MOULTON.

WEDNESDAY, *Dec.* 2*d*, 1863.

Resumed the examination pursuant to adjournment.

14 int. Did Mr. Ruxton at that or any other time tell you why it
153 was necessary for Major Johnson to direct or assent to the conveyance made to him by James Clapp, when the legal title should appear in Clapp and not in Johnson? If yea, state all he said to you in that respect.

Ans. He did not explain in direct terms why he thought it necessary.

15 int. Did he in any manner or way give you to understand why it was necessary? If yea, state how and in what manner. State fully.

(Mr. Le Moyne objects to the witness stating any inference of his own from what took place—of his stating anything more than was said or done.)

Ans. I gathered at some of the interviews with Mr. Ruxton that he preferred to act very guardedly in any negotiations with Johnson, the compl't, and in his consultations with me we both agreed that it would be best and safest for Mr. Ruxton to cut off all claims or pretence of any on the part of Johnson that he might be disposed to set up to the manner in which Clapp got possession of the property, and with a view of meeting that point as agreed on by both of us he was anxious to have Johnson's quitclaim deed executed in the manner which it had been drawn up by me.

16 int. Did Mr. Ruxton inform you how Mr. Clapp held the conveyance or deed from Johnson? If yea, state what he said in that respect.

Ans. He never informed me in direct terms.

154 17 int. Did he in any manner or way so inform you? If yea, state how and in what manner.

Ans. I only gathered it from inference at our interviews; he made no direct communication on that subject to me.

18 int. Look at the original quitclaim deed from James Clapp to William Ruxton of date Dec. 15, 1862, and endorsed "quitclaim deed; James Clapp to William Ruxton; 60 526; State of Illinois, county of Cook. This instrument was filed for record on the seventeenth day of December, A. D., 1862, at the hour of o'clock m., and duly recorded in Book 234 of Deeds, page 578. Wm. L. Church, cl'k," and now shown you, and state whether you saw the same before, and if so when? where? how often? with whom? and under what circumstances was your attention called to it?

Ans. I am satisfied I have seen the same before in the recorder's office of this city, about the 18th of December, 1862, the day after it was filed. I examined it on two occasions, it being under the charge of Wm. L. Church, the ex officio recorder. The circumstances were that I had seen noted on a book known as Abstract of Deeds, that this deed was filed for record, and I examined it to see what it contained, and again looked at it in hunting up the claim of title to the piece of property first described in said deed.

155 19 int. Did you have any conversation with Wm. Ruxton about this particular deed?

Ans. Nothing, except I informed him that I saw it of record.

20 int. Look at the original quitclaim deed from Wm. F. Johnson and Eliza C. Johnson, his wife, to Benjamin F. Carver, of date March 23d, 1861, and in which there is no consideration expressed or named, endorsed: "Quitclaim deed; Wm. F. Johnson and wife to B. F. Carver; State of Illinois, county of Cook; 44 299. This instrument was filed for record the 22d day of April, at the hour of o'clock, 1861, and duly recorded in Book 212 of Deeds, page 372. Wm. L. Church, cl'k," and now shown you, and state whether your attention was called to the same or the record thereof, and if so, when? where? and under what circumstances?

Ans. My attention was called to the record of said deed in the early part of December, '62, at the recorder's office in this city, while I was hunting up the claim of title of a part of the premises described in it.

21 int. Do you know of the def't James Clapp selling or disposing of any part or portion of the premises described in int. 4, prior to December, 1862? If so, state when, to whom, and for what price, and give a description of the premises by him so sold.

Ans. I know of no sale, of my own knowledge, made by Clapp of any of the premises in question. I have seen no deed of any conveyance from him except the one first described here to Ruxton.

156 22 int. Do you know whether the property described in int. 4, or any portion thereof, had been rented or leased by the def'ts or either

of them to any person or persons prior to January, 1863? If so, state what portion, by and to whom the same was rented or leased, for what term, and at what rental.

Ans. I learned from Mr. Ruxton that the piece described as 5 53-100 acres, more or less, had been leased for cattle-pens or yards for a term of about five years, is my recollection, at about $1,200 00 per annum, and that the premises were used by Mr. Sherman, the proprietor of the Empire or Myrick House, situated on Cottage Grove avenue near the premises so leased. The lessee—I don't know who it was; the lessee I presumed to be Ruxton.

N. P. IGLEHEART.

Subscribed Dec. 2, 1863.

J. T. MOULTON.

By agreement of parties the further examination was postponed to to-morrow morning at ten o'clock.

J. T. MOULTON.

THURSDAY, *December* 3, 1863.

Resumed the examination to adjournment.

Present: Mr. McKinnon, Mr. Le Moyne, Mr. Clapp, and witness.

And Enoch G. H. Hooke was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said
157 cause, and did thereupon, upon examination, depose, testify, and say:

1 int. What is your name, age, residence, and occupation in life?

Ans. My name is Enoch G. Hooke; 37 years of age; I reside in Chicago; am a lawyer.

2 int. This is a suit wherein Wm. F. Johnson is complainant and Benjamin F. Carver, James Clapp, and William Ruxton are defendants. Do you know the parties, or any of them? If so, how long, and where have you known them respectively?

Ans. I know the parties, both compl't and def'ts. I have known Mr. Clapp 8 or 9 years; Mr. Carver, 6 or 7 years; Mr. Ruxton, 5 or 6 years. I have known the compl't, I think, for a year, perhaps a little more.

3 int. How long have you lived in Chicago? and where was your office in 1862, and where is it now?

Ans. Nine years in Chicago. My office in 1862 was in Marine Bank building, No. 3, and it is in the same place now.

4 int. Did any one, during the time mentioned, office with you? If so, who?

Ans. I had desk-room in the office of Mr. James Clapp, which was the only office I had.

5 int. Where did you first see and become acquainted with compl't?

Ans. I saw him at Mr. Clapp's office.

6 int. Look at the original quitclaim deed from Wm. F. Johnson and Eliza C. Johnson, his wife, to Benjamin F. Carver, of date March 23d, 1861,
158 in the body of which there is no consideration mentioned or named, which deed is indorsed: "Quitclaim deed; Wm. F. Johnson and wf. to B. F. Carver; State of Illinois, county of Cook; 44 299. This instrument was filed for record the 22d day of April at the hour of o'clock, 1861, and duly recorded in Book 212 of Deeds, page 372. Wm. L. Church, cl'k," and now shown you, and state whether you ever saw the same before? and if so, when? with whom? and where? and also whether you are acquainted with the land therein described or any part thereof.

Ans. I don't recollect that I ever saw it before; I don't think I did. I do not recognize any of the writing except W. F. Johnson's name; possibly

that of Mrs. Johnson; couldn't swear to that, for I never saw her write; and that of Commissioner Hoyne, and that of the recording clerk. The land I do not know anything about, so far as the location or the character of the soil is concerned. I think, however, I have drawn a paper containing a description of the land purporting to be located on the lake shore and of the NW. quarter of the NW. quarter of section one, township 30, range 13 east of the third principal meridian.

7 int. State, if you know, where and in what business the compl't was engaged in the year 1862.

159 Ans. I only know from his statements. When I first became acquainted with him he said he had been loaning money and engaged in the mining business at Pike's Peak, or in that vicinity.

(Ans. objected to by Mr. Le Moyne as to that part which gives statements of compl't.)

(Mr. McKinnon here calls upon Mr. Le Moyne and Mr. Clapp, both now present, to produce all the originals of the deeds and papers referred to in compl't's bill; also all letters from the compl't to the def'ts or any of them, and also all checks and drafts drawn by the compl't on B. F. Carver and B. F. Carver & Co., and all other papers of every name, nature, kind, or description in the hands, custody, or power of them or either of them or their counsel or solicitors, which in anywise relate to the subject-matter in controversy, and the trusteeship of the def'ts Carver and Clapp, for compl't, so that the same may be examined by compl't's counsil.)

8 int. Did you, in the year 1862, see the def't Carver in the office of the def't Clapp? If yea, how often did you see him there during that time?

Ans. I saw Mr. Carver in Mr. Clapp's office frequently during the year 1862.

9 int. Look at "Exhibit A" to compl't's bill and state whether you have seen the original thereof; and if so, with whom and where, and how often.

Ans. I have no distinct recollection of having seen the document
160 at all; I may and may not have seen it, but I cannot call to mind any time or circumstance when or under which I have seen it.

10 int. Have you ever seen the note therein referred to? If yea, when, where, and with whom?

Ans. I never have seen the note.

11 int. Were you at any time, in the year 1862, present, and did you hear any conversation between the compl't and the def't Carver in relation to business transactions, or the matter stated in compl't's bill? If yea, state when and where the same took place, also state in relation to what the conversation was.

Ans. I was present at several conversations between compl't and def't Carver at the office of def't Clapp, in the month of November or December, 1862. The subject of conversation, as near as I can recollect, was a business transaction between def't Carver and compl't Johnson, wherein the latter claimed that def't Carver owed him, Johnson, some four or five thousand dollars, claiming at the same time that the bank-book which he, Johnson, claimed to have left with def't Carver, would show it if produced. Def't Carver claimed that Johnson must be mistaken, that compl't Johnson had taken up all or nearly all the monies that Johnson had deposited with him; and as to the bank-book he was very certain that he had not got it. While, on the other hand, Johnson was positive that he, Carver, had it, or
161 had had it, for he had left it with him, and that the bank-book would show the credit of the amount of a certain note which, I believe, they called Green note, and which Carver had either bought or discounted, and that the proceeds of such note, which Carver had so bought or discounted, be-

ing, as near as I recollect the statement, the sum of $4,500 00, and upon which Johnson claimed he had never drawn for any amount. Mr. Carver still insisting that Mr. Johnson must be mistaken, but he would make a diligent search for the bank-book and if it could be found he would bring it in, and if anything was found to be due from him to Mr. Johnson, he would pay every cent he owed him.

12 int. How often did you hear the compl't ask the def't Carver for the bank-book to which you refer in your last answer? And what did Mr. Carver say to compl't by way of answer? State fully.

Ans. Three or four times certainly. Mr. Johnson visited the office every day, almost, for ten days or a fortnight, perhaps longer, but he did not meet Mr. Carver there very often. On one occasion, and I think subsequent to the time at which the conversation related in the preceding answer occurred, Mr. Johnson and Carver met at the office, and upon Mr. Johnson's inquiry for the bank-book Mr. Carver said that he had not been able to find it; that he had looked everywhere amongst his papers, where he would be
162 likely to find it, but could not. He said in addition to that, that he a barrel of old papers or traps, or something at his house, I think it was, in which it might possibly be, and he would take a look in that, or language to that effect. He subsequently reported that he had not been able to find it.

13 int. What did Mr. Carver say when Mr. Johnson told him that he, Carver, had given him credit in the bank-book referred to for the sum of $4,500 00, as proceeds of the note which you say was spoken of between them as the Green note? Answer fully.

Ans. I not recollect the precise answer, but, as I recollect, the substance of it was that Johnson must be mistaken about his having that amount in his hands over and above what he had drawn. The idea was he did not owe him anything.

14 int. When Mr. Johnson told Mr. Carver that he had given him credit in the bank-book for the proceeds of the note referred to, and that the bank-book would show it, what answer did Mr. Carver then make, as to that fact?

Ans. I do not recollect precisely, but as nearly as I do recollect Mr. Carver thought Mr. Johnson was mistaken about it, and that there was nothing due Mr. Johnson at the time.

15 int. What did he, Carver, say as to fact of the entry itself appearing in the bank-book as a credit to Johnson?

163 Ans. I don't know as I can say anything more than I have already said; that he thought Mr. Johnson must be mistaken about it. The idea was that Mr. Johnson was laboring under a mistake in the matter, and that the whole thing had been closed up, or that Mr. Johnson had got his money.

16 int. Was Mr. Clapp present at any of these conversations?

Ans. He was; as near as I recollect he was present at all of them.

17 int. Did he take any part in the conversations, or was he referred to by the parties in any way about the matters under discussion between tthem?

Ans. No particular part. The general conversation was between Mr. Carver and Mr. Johnson, at these particular times. Mr. Clapp would mingle in the conversation, but as I recollect it, and am quite certain, said but little. He may have been referred to by Messrs. Johnson & Carver.

18 int. Was there anything said in these conversations about a mortgage or deed of trust which the compl't had before that time given to the def't Clapp on certain property in this county, for the purpose of securing the note you have mentioned as being spoken of between the parties as the

Green note? If so, state by whom and all that was said in relation thereto.

Ans. I do not recollect anything as separate from the note.

164 19 int. What, if anything, was said about it in connection with the note? State fully.

Ans. I have no idea of anything being said about the mortgage alone, only that Mr. Johnson expressed a desire to be relieved of debt in some way, and also, if I recollect rightly, that he had hoped that Mr. Carver would be able to pay the amount that he claimed was due to him from Mr. Carver.

20th int. Had you ever seen Maj. Johnson before you did at the office of Mr. Clapp and yourself as stated?

Ans. No.

21 int. Had you ever heard of him before you saw him at that office?

Ans. I had heard of a Wm. F. Johnson, but as to his identity I don't know as I could swear.

22 int. Did you hear any conversation between the defendants, Mr. Carver, Mr. Clapp, about some transactions which Mr. Carver had had with the complainant, before that time?

Ans. I recollect once, but once, before I saw Mr. Johnson of Mr. Carver's coming into the office and stating that old Johnson was coming back.

23 int. Will you please state the entire conversation which, at that or any other time before you saw Maj. Johnson, took place between the defendants Carver and Clapp about business transactions between said Carver and Johnson.

Ans. Well, at this conversation, and the only one that I can think
165 of between the defendants Carver and Clapp, and when Mr. Carver stated that old Johnson was coming to town Mr. Clapp did not seem to know or recollect of whom Mr. Carver spoke, and upon Mr. Carver refreshing his recollection upon some money transactions he did seem to remember more about the man and more about the matter, the only distinctive feature of the conversation that I remember was made by Mr. Carver to Mr. Clapp, which was, you must help me a little in this matter. I don't remember anything else.

24 int. You say in your answer to 12 int. that Mr. Johnson did not always meet with Mr. Carver when he, Johnson, called at Clapp's office. Will you please state what you mean by so saying, and whether you ever knew of or saw Mr. Carver try to evade being seen by the compl't at that office during the time you speak of? Answer fully.

Ans. When I made my ans. to the 12 int. I was thinking of what I had been led to believe of Mr. Johnson's statements as to his having made an appointment to meet Mr. Carver there. Subsequent to Mr. Johnson's coming into town, and his 1st call at the office, Mr. Johnson called several times, and one day when Mr. Johnson was in our office Mr. Carver came to the door, opened it, looked in and retired again at once.

166 25 int. Was this after the interviews between Carver and Johnson about the bank-book and note of which you have spoken?

Ans. They had met previously in the office.

26 int. What, if anything, did Johnson say to Carver about taking up or settling this $5,000 note before referred to, and what was Mr. Carver's ans.?

Ans. I don't recollect anything with sufficient accuracy on that point to swear to it.

27 int. Did you, during these interviews between Carver and Johnson about the bank-book, when Mr. Clapp was present, hear anything said about extending the time of payment on that $5,000 note? If so, by whom, and what was said? State fully.

Ans. On one of these occasions on which Mr. Johnson had called at the

office, Mr. Clapp and myself present, Mr. Johnson stated that he had offered to sell his property, and I think he stated he had put it in the hands of J. H. Kerfoot & Co. In the course of the conversation with Mr. Clapp the latter stated that he thought that he, Mr. Johnson, could get his note extended, and that he didn't believe that there was any necessity for making the sale at that time, and expressed what I took to be a warm desire to help Mr. Johnson. At that time, or very soon after, Mr. Johnson offered the property to Mr. Clapp, for sale. Mr. Clapp didn't seem anxious or desirous of
167 buying, and, after investigating the matter, declined Mr. Johnson's proposition.

28 int. Was Mr. Carver present on any occasion when Mr. Clapp and Johnson were talking about an extension of time on the note referred to? And, if so, state what he said or did in relation thereto.

Ans. I was present at a conversation, or rather in the room when the subject of the note and mortgage was under discussion, and, as I remember it, Mr. Johnson was still desirous of insisting upon a sale of the property. Mr. Clapp remarked that he thought the note could be extended without any difficulty. To this proposition of Mr. Clapp's Mr. Carver seemed averse. I think at this conversation Mr. Carver said that he thought he could get a purchaser.

29 int. What way, and how, or what words did Mr. Carver use to show his aversion to such extension? State particularly.

Ans. Well, Mr. Carver shook his head and signaled Mr. Clapp to stop, as I understood it; that's all.

30 int. What was the position of the parties present at that time, and was Johnson so situated as to see Mr. Carver shake his head and give the signal to Clapp?

Ans. Mr. Carver and Mr. Johnson were sitting facing the windows. Mr. Carver was on the left hand side of the stove and Mr. Johnson on the
168 right hand. Mr. Clapp, when he made the remark, was half seated on the table, facing them. I was passing from the counsel room, I think, into the main room; yes, I know the fact, Mr. Johnson was so situated as to see Mr. Carver's motions, for, as I recollect, Mr. Johnson sat with his face at an inclination towards Mr. Clapp, who was more in front of Mr. Carver than he was of Mr. Johnson.

31 int. Did you ever hear anything more said about extending the time on the note and mortg. after that memorable shake of the head and signal from Carver to Clapp?

Ans. I don't recollect anything distinctly relating to that particular subject, though Mr. Clapp may have renewed the proposition, as he was inclined to an extension.

32 int. Did you hear Carver say anything about Johnson's being hard up about that time for funds? If so, to whom? and what did he say?

Ans. Yes, I heard Mr. Carver make a remark that he didn't believe old Johnson had a cent; but at what particular time I don't recollect. He made the remark when Mr. Clapp and myself were present.

33 int. Did Carver say whom he thought he could get to purchase this property from Johnson? If yea, state whom he named.

Ans. I did not hear him state the name of any one whom he thought he could get to purchase it.

34 int. In what connection did Carver say that he believed old John-
169 son didn't have a cent to his name, and how was the remark brought about? State fully.

Ans. As I recollect the matter, it arose in a conversation after it had been determined by Johnson to sell, and the conversation between Mr. Carver and

Mr. Clapp was about the papers, or something of that kind. I can't state the exact particulars.

33 int. Do you know anything of a deed having been made about that time from Johnson and wife to James Clapp? If so, state by whom that deed was drawn, what kind of conveyance it was, and at whose instance and request it was made.

Ans. I have a recollection of drawing a quitclaim deed, I think it was from Johnson and wife to James Clapp, of the property in question, but whether the same was ever executed and delivered or not I am not able to state without refreshing my memory from the papers. I know there were some papers drawn, and I believe Mr. Johnson and Mr. Clapp joined in the request for me to draw the deed. Mr. Johnson expressed a desire to have the deed prepared, and, as I had drawn papers for Mr. Clapp, I drew this deed for him, not, however, from an desire on his part to have Johnson execute it. Johnson expressed great willingness to execute it; Mr. Clapp was certainly indifferent in the matter.

170 36 int. State, if you know, when and for what reason or purpose that deed was made from Johnson to Clapp.

Ans. Well, it was made to vest the title in Mr. Clapp, as I understood it, and it was then so expressed.

37 int. Was there any arrangement about holding that deed in any way or for any purpose, or was it to be placed on record immediately? If so, state what arrangement there was about it, and with whom and for what purpose the same was made.

Ans. It was not to be placed on record immediately, but Mr. Johnson directed that the same should remain in escrow until the consideration money, or a balance of the same, should be paid, and I think the deed was left with Mr. Clapp.

38 int. Did Mr. Carver, in any manner or way, figure in this conveyance from Johnson to Clapp? If so, state fully how, and in what manner, what he said and did.

Ans. I believe I have already stated Mr. Carver was to find the purchaser, but what precise steps or acts he took or performed I have no distinct recollection.

39 int. Do you know of his taking any part in or being consulted about that conveyance? If so, state what part he took and by whom he was consulted.

Ans. I don't recollect distinctly. He had something to do with it, but what I am unable to state. If I ever knew I do not now recollect.

171 40 int. Did or was Mr. Clapp to pay any consideration for that conveyance?

Ans. Not as I know of. On the contrary, I understood that the consideration was coming from somebody else.

41 int. Who, if any one, was to see to the furnishing of the consideration for that conveyance from Johnson to Clapp?

Ans. The purchaser, I suppose.

42 int. Who was to find the purchaser?

Ans. Mr. Carver.

By agreement of parties the further examination is postponed to to-morrow morning at 9½ of the clock.

J. T. MOULTON.

FRIDAY, *December* 4, 1863.

Resumed the examination pursuant to adjournment.

43 int. Look at the original quitclaim deed made by Jas. Clapp to Wm.

Ruxton, of date Dec. 15th, 1862, endorsed: "Quitclaim deed; James Clapp to William Ruxton; 60, 526; State of Illinois, county of Cook; this instrument was filed for record on the seventeenth day of December, A. D. 1862, at the hour of o'clock m., and duly recorded in book 234 of deeds, page 578. Wm. L. Church, cl'k," now shown you, and state whether you saw the same before. If yea, when? where? with whom? and how often? and under
172 what circumstances?

Ans. I have seen the deed before, and the description of the property conveyed is in my handwriting; the date and names of the parties to the instrument is in the handwriting of Mr. Clapp. I saw this about the time it was executed. I think I took the deed from Mr. Clapp to Mr. Ruxton, the party named in the deed; and I believe this is the instrument which Mr. Clapp accidentally omitted to acknowledge before a notary public. On taking it to Mr. Ruxton, he discovered the mistake and requested me to take it back to Mr. Clapp. I did so. Farther than this I do not recollect the precise particulars. I may or may not have taken it to Mr. Ruxton again after it was executed.

44 int. Do you know of more than one deed having been made by Mr. Clapp to Mr. Ruxton for this same property?

Ans. I do not. I may have drawn up other papers, in the place of this, that were not executed.

45 int. State if you know if Mr. Clapp expressed or evinced any unwillingness to execute this conveyance or a conveyance of the premises therein described?

Ans. He did not manifest any extraordinary haste of executing it; how this was to be interpreted I leave others to judge.

45 int. Was Mr. Ruxton present at any of these conversations between Mr. Johnson, Mr. Carver, Mr. Clapp, that you have mentioned? If yea, how often? What part did he take in the same?

173 Ans. Mr. Ruxton was never present, to my knowledge.

45 int. Did Mr. Carver announce what success he had in finding the purchaser at any time after he had promised to find the same? If yea, state what he said.

Ans. I presume he must have done so, although I do not recollect of his ever having made the announcement in my presence. I learned from Mr. Clapp that he was to convey the premises to Ruxton.

46 int. Did you learn from Mr. Clapp that Mr. Carver had succeeded in finding the purchaser? If yea, when? and what did he say?

Ans. I have already stated that I did learn from Mr. Clapp that Mr. Ruxton was to have the property, but I do not recollect what he said, or the substance thereof, any further than I have already stated.

47 int. What did Mr. Ruxton say when you brought him the deed, signed by Mr. Clapp but not acknowledged? Ans. fully.

Ans. I do not recollect anything except that the conversation was to the relation of its not being acknowledged, which was very brief, and closed by requesting me to take the deed back. I announced the fact that it was not acknowledged. I believe he requested me to ask Mr. Clapp to acknowledge it at once and return it back.

48 int. Did you bring the deed back to Mr. Clapp, as requested by
174 Mr. Ruxton? And if so, what did Mr. Clapp then say? Ans. as particularly as you can.

Ans. I did bring the deed back to Mr. Clapp, but I do not recollect as to what he said any farther than I gathered that he would acknowledge it.

49 int. Did Mr. Ruxton hand you any other deed for the same property? If yea, state when when and for what purpose, and, if you know, state also by whom the same was prepared.

Ans. He did hand me another deed of the same property, as I learned from Mr. Ruxton, from Mr. Johnson to Mr. Clapp, or to himself, which I couldent swear to now, and requested me to get Mr. Johnson to execute it; I took the deed, and put the same in my pocket, not knowing where to find Mr. Johnson. I carried the same 3 or 4 days, as near as I recollect, till I met Mr. Johnson in the court-house, at the sup'r court-room. I then requested Mr. Johnson to execute the deed, which he declined to do. I soon afterwards returned the deed to Mr. Ruxton, informing him that W. Johnson declined to execute it. I do not know by whom the same was prepared, not recognizing the handwriting nor being informed by any one; this occurred very soon after I took the deed from Mr. Clapp to Mr. Ruxton, to the latter.

50 int. Did Mr. Ruxton state to you why he desired to have the
175 deed you mentioned executed by Mr. Johnson? And did he tell you who advised him so to do? If so, state all he said in that respect.

Ans. He did; he said that there was no consideration expressed in a certain deed from Johnson to Carver, or from Carver to Clapp, and also that there was an incomplete description of the property in some one of the deeds, which one I do not recollect precisely; I think, however, it was in the deed from Johnson to Clapp, or from Clapp to himself; at any rate, there were imperfections in some of the instruments of conveyance, between and perhaps including the conveyance from Johnson to Carver and himself. He said that his counsel had advised him, but the paper did not convey anything, or language to that effect; I believe this occurred when he handed me the deed which he wished me to get Johnson to sign.

51 int. Did Mr. Ruxton say anything to you or intimate anything about the manner and purpose in which Mr. Clapp held the conveyance of the premises from Mr. Johnson? If yea, state all in that respect.

Ans. I do not recollect that he did.

52 int. In the conversation between Mr. Carver and Mr. Clapp, that you have mentioned, for whom and in what capacity was Mr. Clapp acting?

Ans. Mr. Carver stated on one occasion, when Mr. Johnson was
176 present, I think the statement was made to the latter, that he, Carver, had conveyed the property which Mr. Johnson had previously conveyed to him, to Mr. Clapp, for the purpose of protecting the property from being sold or incumbered in any way, through the embarrassments which he then was and had been laboring under, in other words, to protect the property from being sold upon executions or judgments that were being obtained against him about the time he made the conveyance to Mr. Clapp. The capacity must be drawn by inference. I believe Mr. Carver also stated that he did not wish to embarrass Johnson's property.

53 int. Do you know of the property in question having been sold for taxes within the past 3 years? And if so, how do you know the same?

Ans. I know it from the statement of Mr. Carver, perhaps Mr. Ruxton.

54 int. State any and all conversations you have had with Mr. Carver on the subject of tax sales, tax certificates, and redemption thereof, relative to the property in question.

Ans. Subsequent to the time that I requested Mr. Johnson to sign the deed, which Mr. Ruxton handed to me as before stated, I think I stated one day that Johnson was going to kick up a row over the property now in litigation in this suit, and he replied that he dident care much, for it
177 was going to cost so much to get up the tax certificates, and he asked me to guess how much one party, I do not recollect the name, were going to charge on the redemption on a taxed deed, as I understood him; I replied that I had no idea; whereupon he replied that they were going to charge him $2,000, or some sum that would be equally extravagant, and that he al-

ready paid out a large sum, which he then stated, but I do not recollect the amount.

55 int. When and where did this last conversation take place between you and Mr. Carver.

Ans. I think at the office of myself and Mr. Clapp; I do not recollect the time.

56 int. Was it before or after the commencement of this suit?

Ans. As I have already stated, it was subsequent to the time, and I requested Mr. Johnson to execute the deed which Mr. Ruxton handed to me for that purpose.

57 int. Have you had any conversation with Mr. Carver or Mr. Ruxton about the value of the premises in controversy?

Ans. I have not, unless the conversation between myself and Mr. Carver last mentioned can be construed as relating to it.

(Mr. McKinnon here demands the production of the letters and papers heretofore specifically called for, and also for the production of the
178 bank-books or books of account of B. F. Carver, wherein are contained the account of compl't with him during the years 1860, '61, and '62, or any portion of such account at the next meeting.)

(Mr. Le Moyne says that Mr. Billings has produced the only letters of which he has any knowledge.)

Cross-examined by Mr. Le Moyne.

1 c.-int. At the interview between Johnson and Carver referred to by you in ans. to the direct int. No. 11 did Mr. Carver pretend or try to convince Johnson that he, Carver, had never given a bank-book to Johnson, or that such bank-book did not show a credit of $4,500 for the proceeds of the note held by Green? Was there any dispute or difference between Carver and Johnson on these points? Was not the only question of difference as to whether Johnson had drawn all the money deposited with Carver?

Ans. There was a difference between Mr. Johnson and Mr. Carver, wherein Mr. Johnson insisted that such a credit would appear upon the bank-book, and that he had left the bank-book with Mr. Carver. Mr. Carver insisted that Mr. Johnson must be mistaken, and did use some language tending to convince Mr. Johnson that he was mistaken; but what that language was I could not give anything more than the general tenor of it. The conversa-
179 tion at this particular time turned upon the fabulous amounts of money which they both as individuals had been making at some time in their lifetime. Mr. Johnson at this time, I recollect, waived rather the difference between him and Mr. Carver, and I recollect of his saying that Mr. Carver had treated him like a gentlemen, and that he was not going to have any difference at this late day. He did. There was a difference other than concerning whether Johnson had drawn all he had deposited with Carver.

2 c.-int. Examine paper marked by the master Exhibit 1. State, if you know, the signature to the same, and whose it is.

Ans. I do know the signature; it is that of the compl't in this suit.

3 c.-int. State if that receipt was not given after or upon a settlement of accounts between Johnson, Carver, and Clapp.

Ans. It was made at or near the close of the transactions between Messrs. Johnson and Carver, and, as I understood it, on a settlement of the accounts or subject of difference between Mr. Carver and Mr. Johnson, it was signed in my presence.

4 c.-int. Before that receipt was given had not Mr. Johnson gone over the account between him and Carver with Mr. Clapp, had not Mr.
180 Clapp showed him the cheques for the money drawn from Carver on his account and was not this account settled at that time?

Ans. Before this receipt was signed Mr. Clapp exhibited certain orders or cheques to Mr. Johnson, and footed up the amount thereof, and thereupon Mr. Johnson signed the receipt marked Exhibit 1. I believed at the time it was a settlement of all accounts between Carver and Johnson.

5 c.-int. In making such settlement, was not Johnson credited with the two amounts shown to his credit on the book marked Exhibit A?

Ans. I cannot state; I did not see the bank-book marked Exhibit A, nor any other book containg the accounts; I supposed, however, that he had been credited with what he claimed, on account of the note and other transactions.

6 c.-int. Can you state the am't or about the am't of the checques which were shown to him on the settlement?

Ans. I cannot with any degree of accuracy; I saw at the time an exhibit of the account in pencil mark, which was run over to Mr. Johnson, which I should probably recognize if I could see the same.

7 c.-int. Examine paper marked by the master Exhibit 2, and state if that is the memorandum used upon the settlement that you referred to.

181 Ans. I have seen this paper before, and it is the same, to the best of my knowledge, exhibited or made up at the time of the signing of the receipt before mentioned.

8 c.-int. Were the checques for the amounts shown on this memorandum to Johnson at that time?

Ans. There were checques, or orders, or vouchers, or some papers purporting to be of that nature, exhibited to Mr. Johnson at the time of settlement, which, I believe, corresponded with the amounts on the Exhibit 2.

9 c.-int. Did you at any time prior to the sale to Ruxton hear Johnson offer all the property which had been conveyed to Clapp for sale? I so, at what price, and to whom did he try to sell it?

Ans. I did hear Mr. Johnson offer the property for sale to Mr. Clapp for $4,000 over and above the Green mort'g.

10 c.-int. Did he not seem anxious to sell it at that price?

(Obj. to.)

Ans. He did.

11 c.-int. About what time was this?

Ans. Just before executing the papers to Ruxton; it may have been a week, more or less.

By agreement of parties, the further examination is postponed to to-morrow morning, at 9½ o'clock.

J. T. MOULTON.

182 SATURDAY, *December* 5, 1863.

Resumed the examination, pursuant to adjournment.

(Mr. Le Moyne says that he has nothing which he deems proper to produce under the notice given. That if Mr. Carver has any books, such as described in the notice, I have never seen them or known of them, have no control over any such books, and know of no way of getting them. I have not seen Mr. Carver for months; don't know where he is, or anything about him, except that I have heard that he was living in New York.)

Direct examination resumed by Mr. McKinnon.

58 int. Mr. Le Moyne has asked you in his 1st c.-int. if, at the interview between Johnson and Carver referred to by you in ans. to the direct int. No. 11, did Mr. Carver pretend or try to convince Johnson that he, Carver, had never given a bank-book to Johnson, or that such bank-book did not show a cr. of $4,500 for the proceeds of a note sold to Green. Will you now please ans. whether Carver did so try to convince Johnson?

Ans. As I have said before, he did.

59 int. Did Carver try to convince Johnson that the b'k-book re-
183 ferred to did not show a cr. to Johnson of $4,500, as proceeds of a note, secured by the mort'g, and which note you say was spoken of as the Green note? Ans. specially and catagorically.

(Objected to.)

Ans. Mr. Carver stated to Mr. Johnson that he thought the transaction would not appear on the bank-book, and that he, Johnson, must have used the proceeds in a different way. That is as near as I recollect the ans.

60 int. In the same c. int. referred to Mr. Le Moyne has asked you whether there was any other difference between Johnson and Carver except that Mr. Carver stated to Johnson and insisted that he, Johnson, had drawn out all the money he deposited with him, Carver. Ans. fully and particularly whether there was any other difference; and if so, state the same fully.

Ans. As I stated before there was a difference between Mr. Carver and Mr. Johnson other than upon the subject of having drawn out all the money. Mr. Carver thought that Mr. Johnson was mistaken about having left a bank-book with him, and about the amount of credits that would appear on it if found, and also about disposition of the proceeds of the Green note. These are the material points of difference as I recollect them.

61 int. State what was said by Mr. Carver at the interview about the disposition of the Green note.

Ans. Mr. Johnson contended that Mr. Carver had either discounted or bought the same, and that the proceeds were immediately passed to
184 his credit on the bank-book. On the other hand, Mr. Carver insisted that he, Johnson, had used the proceeds of the note some other way, and labored to some extent to convince him to that effect.

62 int. Did you at any of these interviews, or at any time while the same were progressing, hear Johnson express faith and confidence in the integrity, truthfulness, and honesty of Carver? And if so, state in what manner and how he so expressed himself, fully and particularly.

Ans. I recollect one conversation where the subject of the bank-book and other matters of business between them had been under discussion wherein Mr. Johnson said that Mr. Carver had treated him like a gentleman, had loaned him money when he very much needed it, and he should have no difference at this late day. The manner in which Mr. Johnson expressed himself was complimentary, thankful, and to all appearances that of one having confidence. There was no appearance of distrust.

63 int. You say in ans. to a previous int. that you saw Mr. Carver come to the door of your office and that of Mr. Clapp when Mr. Johnson was in the same, and that Mr. Carver after opening the door and looking in immediately shut the same and left, and that this occurred during the time they were discussing the matters in controversy between them. Will you
185 now please state whether you ever saw Mr. Carver do so more than once? And if yea, how often? And if Mr. Carver made any signs or motions on such occasions, state all he did.

Ans. I do not recollect of his looking in at the door after the manner I have already stated except once.

64 int. State if you know whether Carver during that time evaded meeting Johnson; and if so, what he did in that respect. Answer fully and particularly.

(Objected to.)

Ans. Mr. Carver came in one morning at ten o'clock, or a little before, perhaps after, and enquired if Johnson had been in; on receiving a reply in the negative, after a few moments' delay he went out. Shortly after Mr. Johnson came and enquired for Mr. Carver, and remained some time. Mr. Carver did not return.

65 int. What did Mr. Carver say on that occasion, or any other occasion when he so called, about meeting Mr. Johnson? Answer fully.

Ans. Mr. Carver expressed at different times the disposition not to meet Mr. Johnson as often as he came at the office. Mr. Johnson called every day for a week, more or less, after Mr. Carver had undertaken to look up his bank-book, but never met Mr. Carver there.

66 int. What reason did Mr. Carver give, or what did he say by way of expressing a disposition not to meet Mr. Johnson when he called at
186 your office, and were those dispositions expressed by Carver, as you have stated, made during the time he was hunting up the bank-book for Maj. Johnson? Ans. specifically and fully.

Ans. I don't know that he ever gave any reason. He said in substance on one or two occasions that he didn't care to meet Johnson, and he evinced a disposition not to meet him. At any rate at the times Mr. Johnson called at the office, and all that did occur occurred between the time when Mr. Johnson 1st came into the office and the closing up of the transactions when the receipt was given.

67 int. You state in ans. to 3 c. int. that you saw the receipt, marked Exhibit 1, signed in your presence. Will you please state where that receipt was made, in whose handwriting the body of the same is, and who were present when the same was made?

Ans. The body of the receipt is in the handwriting of Mr. Clapp. Was drawn at his office. Mr. Clapp, Mr. Johnson, and myself were all the parties present.

68 int. Had Mr. Carver been at your and Mr. Clapp's office on the same day, and before that receipt was made?

Ans. This receipt was drawn quite early in the day, and I do not think Mr. Carver had been there before on that day, nor was he there afterwards to my recollection.

187 69 int. How soon did you see Mr. Carver at your office after the making of this receipt.

Ans. I do not think I saw him for 2 or 3 days. I think he was not in town. He left the settlement of his matters in the hands of his attorney, Mr. Clapp. He was not present at the settlement.

70 int. Was this receipt shown to Mr. Carver by Mr. Clapp, or any one else, to your knowledge after the making of the same.

(Objected.)

(Mr. Le Moyne objects to the witness stating anything he may have overheard in conversation between Mr. Carver and his attorney, or any knowledge he may have derived in that way.)

Ans. I do not know whether it was shown to Mr. Carver or not. I looked at the receipt.

71 int. Did you hear any conversation between Carver and Clapp about this receipt or the arrangement which Clapp had made for Carver in these matters? If yea, state all that was said.

(Objected to.)

Ans. I have no recollection of any conversation between Mr. Carver and Mr. Clapp after the making of this receipt concerning the matter in controvery in this suit.

72 int. You say in ans. to 4 c. int. that before this receipt was signed Mr. Clapp exhibited orders or checks to Mr. Johnson, and footed up the amount thereof, and thereupon Mr. Johnson signed the receipt. Do you know
188 what those checks or orders were, by and on whom they were drawn, and did you examine the same? Ans. fully.

Ans. I took the checks and the receipt and paper, marked "Exhibit 2," into my hands at the time and hastily glanced over them. I do not recol-

lect the contents, the date, or the amounts for which the orders were drawn. I recollect one circumstance, which was that a portion of them, how many or for what amount I cannot state, were not drawn by Mr. Johnson, but, as I recollect, drawn by Mr. Carver in favor of Mr. Johnson on the Marine Bank or some other banking institution.

73 int. Did Mr. Johnson examine those checks or orders at that time?

Ans. I saw him looking at them; whether he read them or not I don't know.

74 int. State what, if anything, Maj. Johnson said upon examination of those checks or orders at that time. Ans. fully and particularly.

Ans. Well, he said he was in the dark. He said that he couldn't get at the subject if he could not get his bank-book, or language to that effect.

75 int. What did he say about the checks or orders themselves, if anything? State fully.

Ans. He said that those which I had mentioned as not being drawn by himself were no evidence of indebtedness against him.

189 76 int. Did you among the checks and orders so exhibited notice any with the signatures torn off?

Ans. I do not recollect that I did, and I might state here that the only reason that I remember anything about the checks is the fact that some of them were not drawn by Mr. Johnson.

77 int. What became of those checks, vouchers, or orders, as you call them. Who got them, or had them after this receipt was signed? Ans. distinctly.

Ans. Mr. Clapp had them immediately after the signing of the receipt, but who had them subsequently, or where they went to, or in whose hands they are now, I don't know.

78. int. How long did Mr. Johnson remain in your and Mr. Clapp's office after signing that receipt?

Ans. But a short time as I recollect it.

79 int. Did you see those orders, checks, or vouchers with Mr. Clapp after Johnson left, or was your attention called to them after he so left, and did Mr. Clapp then have any other papers used on this settlement you speak of? Ans. distinctly.

Ans. I saw the papers but shortly after Mr. Johnson left. I do not know that Mr. Clapp had any other papers, vouchers, or books. I not recollect of seeing any.

80 int. Was your attention in any way called to them after Mr. Johnson had left, and given this receipt? And if so, state how.

190 Ans. After Mr. Johnson left, on the heels of his leaving, Mr. Clapp passed me the receipt and the papers or vouchers and paper "Exhibit 2," and this is the time that I hastily glanced at them as I before stated.

81 int. Did you at that time see among the papers handed you by Mr. Clapp those checks drawn by Mr. Carver, purporting to be in favor of Mr. Johnson, and used in the settlement between Clapp and Johnson.

Ans. I must have seen them.

By agreement of parties the further examination is postponed to Monday morning next, at 9½ o'clock.

J. T. MOULTON.

MONDAY, *December* 7, 1863.

Resumed the examination pursuant to adjournment.

82 int. Have you seen the checks or vouchers used on that settlement at any time since the date of the settlement?

Ans. I don't know that I have.

83 int. Do you know that you have not?

Ans. No, I don't.

84 int. Have you seen any papers used on that settlement at any time between the date thereof and the time that you were called as a
191 witness in this case?

Ans. I don't know that I have since the day of settlement.

85 int. You say in ans. to 8 c. int. that the checks, orders, or vouchers exhibited to Maj. Johnson at the time of that settlement you believe corresponded with the amount on "Exhibit 2." How do you know or do you know the fact that they did correspond, and how do you know the same?

Ans. My recollection on that subject is exceedingly indistinct. I must have noticed the correspondence between a portion of the vouchers and the figures on "Exhibit 2," but I do not think I compared them all, and if I compared any I do not recollect which ones. As I have stated before, I should have scarcely recollected about the vouchers had it not been that some of them were not drawn by Mr. Johnson.

86 int. When Mr. Clapp handed you those papers after the settlement with Johnson, and after Johnson had left the room what reason did he give, if any, or what did he say at that time? Answer fully.

Ans. As near as I recollect my attention was called to the papers to fix the fact of the settlement.

87 int. What did Mr. Clapp say at that time to you?

Ans. Well, nothing except that it might be well enough for me to recollect the fact.

88 int. Did he give any reason why it might be well enough for
192 you to recollect the fact? If so, state what reason he gave and all he said fully and particularly.

Ans. I do not recollect what particular language Mr. Clapp used on that occasion, but as near as I do recollect it, he wanted the fact of settlement recollected in case Johnson might make any disturbance thereafter. I do not recollect anything farther of what he said, if anything.

89 int. Were there any books used on that settlement between Clapp and Johnson.

Ans. I did not see any.

90 int. How was it, or what was there in the settlement that called your attention so particularly to those checks purporting to be made by Carver on the Marine or some other bank?

Ans. I have said I should scarcely have recollected anything about them had it not been for the fact that some of them were not drawn by Mr. Johnson. I suppose that must be the fact. As near as I recollect, on that day I was engaged in some matter that turned my attention from the subject.

91 int. Did Clapp give Johnson after the making of that receip any money?

Ans. Yes, I recollect he gave him $150.

92 int. State if you know whether Mr. Clapp after receiving the
193 receipt gave Johnson an order on B. F. Carver & Co. for colaterals belonging to Johnson, and held by that company. And if so, what was the nature of the colaterals?

Ans. I believe he did give an order for some deeds of certain property in Denver City, or some other vicinity in the vicinity of Pike's Peak.

93 int. Do you know whether Johnson received the colatarall? and if so, how do you know the same?

Ans. I only know from what Johnson said after obtaining them. I think he came into the office. As I think, he went up stairs to get them, up to Mr. Billings's office.

Recross-examined by Mr. Le Moyne.

12 c. int. At the time the settlement was made between Clapp and John-

son do you know of any reason why Johnson did not take the vouchers used in the settlement? Was any objection made to his doing so by Mr. Clapp or any one else?

Ans. I know of no reason; I heard none alleged; I heard no objection made.

13 c. int. At the time Johnson was trying to induce Clapp to purchase the property in question what representations did he make in regard to the condition of the title?

Ans. That the title was good, and that there were no incumbrances on it except for taxes and the $5,000 mortgage.

194 *Direct examination resumed by Mr. McKinnon.*

94 int. Does your answer to 13 c. int. set forth substantially or in words all that Johnson said on the occasion referred to with regard to the title? If it does not, then state all he did say and all that took place on that occasion in that respect.

Ans. Mr. Johnson represented the title to be good as far as he knew. He said he knew nothing wrong about the title, and when the fact that there were judgments against him was disclosed to him he did not see how it could be; he had no recollection of any process being served upon him upon which judgment could be obtained. This is substantially what he represented on that occasion.

Mr. McKinnon has no further questions to ask this witness, except in reference to the vouchers heretofore called for, when they shall be produced, and that he understands they are to be produced by Mr. Clapp to-morrow morning; and the further examination is postponed by agreement to to-morrow morning, at 9 o'clock.

J. T. MOULTON.
ENOCH G. HOOK.

Subscribed Dec. 8, 1863.

J. T. MOULTON.

195 TUESDAY, *Dec.* 8, 1863.

Resumed the examination pursuant to adjournment.

Mr. Clapp produces a power of attorney from Wm. F. Johnson to James Clapp, dated April 30, 1860, to sell note marked by the master "Exhibit 3," 3 checks, amounting to $600 00 in the whole, marked Exhibits 4, 5, and 6, respectively; (Mr. Clapp says that those checks represent monies paid by him to Mr. Johnson, which were afterwards repaid to him by Mr. Carver, which money was advanced contemporaneous with the making of the promissory note and trust deed mentioned in evidence;) a quitclaim deed from Wm. F. Johnson to James Clapp, dated Dec. 9, 1862, and marked "Exhibit 7;" also quitclaim deed from Wm. F. Johnson and wf. to B. F. Carver, dated March 23, 1861, marked "Exhibit 8;" also eleven vouchers, marked Exhibits 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19. (Those vouchers, Mr. Clapp says, including the 3 checks above, were used on settlement with Johnson by me and have remained in my possession subject to Mr. Johnson's order, and not objected to by him when I showed them to him.)

Mr. McKinnon objects to any statements by Mr. Clapp in that way.

By agreement of parties further examination is posponed to to-morrow morning, at 9½ o'clock.

J. T. MOULTON.

196 WEDNESDAY, *Dec.* 9, 1863.

Resumed the examinaton pursuant to adjournment.

It is admitted on the part of respondents that Mr. J. M. Walker, as the

attorney for the Chicago, Burlington, and Quincy Railroad Co., paid to defendant James Clapp the sum of about $250, for acres of the undivided half of SW¼ section 29, T. 39 N., R. 13 E., on or about at some time during the summer of A. D. 1863. The land so paid for to be used by said railroad co. in passing through said land, said sum being paid without any assessment on the land.

J. T. MOULTON.

And Allen C. Lewis was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the said cause, and did thereupon, upon examination, depose, testify, and say:

1 int. What is your name, age, place of residence, and occupation in life?

Ans. My name is Allen C. Lewis; age 43 years; Chicago; real estate.

2 int. Did you in the years '61 and '62 attend the tax sales held in this city, which took place for the sale of lands for State, county, and city taxes of the years 1860 and '61, respectively?

Ans. I did.

197 3 int. Did you purchase at such sales any land in this county which were then sold for taxes?

Ans. I did.

4 int. Do you know the northwest ¼ of northwest ¼ of section 1, town. 39, range 13?

Ans. I don't know that I was ever on the land.

5 int. Do you know whether at the sale of June, 1861, for State and county tax of 1860, the east ½ of said premises were sold for taxes? and if so, to whom and for what amount?

Ans. I could not tell.

6 int. Have you any means of telling?

Ans. I have.

7 int. Will you please ascertain and state whether at the sale of June, 1861, you purchased the undivided ½ of southwest ¼ of section 29, town. 39, range 13, and the east ½ of northwest ¼ of northwest ¼ of section 1, town. 29, range 13, sold for State and county tax of 1860, and also whether at the sale of July, 1862, you purchased the west ½ northwest ¼ of northwest ¼ of section 1, township 39, range 13, sold for the State and county tax of 1861, and which sales took place in this county?

Ans. I can do so. I purchased June 24th, 1861, at tax sale—State and county taxes—east ½ of northwest ¼ of northwest ¼, section 1, township 39, range 13, and also at the same sale the undivided ½ of southwest ¼ section 29, township 39, range 13. I purchased July 28th, 1862, west ½ northwest ¼ of northwest ¼, section 1, town. 39, range 13.

198 8 int. What did you do with certificates?

Ans. Those on section 1, I have got them marked assigned to Ruxton. That on section 29 to J. B. King.

9 int. Who negotiated with you for the certificates on section 1?

Ans. I think it was Mr. Carver that made the arrangement; he came to my office and asked me what I would take for the certificates on section one.

10 int. What Mr. Carver do you mean?

Ans. B. F. Carver.

ALLEN C. LEWIS.

Subscribed Dec. 9, 1863.

J. T. MOULTON.

MARCH 19, 1864.

Pursuant to the order of said court of March 16, 1864, I was at-

tended by Mr. McKinnon for complainants and Mr. Le Moyne and Mr. Clapp for respondents, and Enoch G. Hooke, heretofore examined, for complainants, as a witness, and the said Hooke, upon further examination, did testify:

Ninety-fifth int. (95.) State if you know what am't of money the complainant Johnson was to receive of Carver in consideration of the conveyance made by Johnson to Clapp, December 9th, 1862, and how the same was to be paid; and also, if you know, state how it was paid.

199 Ans. I don't know of any consideration that Johnson was to receive of Carver in consideration of the conveyance from Johnson to Clapp.

96th. State, if you know, what amount of money Johnson was to receive in consideration of said conveyance.

Ans. If it is meant the conveyance from Johnson to Clapp, I don't know of any, as Mr. Clapp held the property for Mr. Johnson.

97th int. Do you know anything about a check or order having been given by Carver to Johnson in December, 1862? If so, state all you know about it fully and particularly.

Ans. In consideration of the conveyance of certain property, which I understand to be in litigation in this suit, by Johnson and Mr. Clapp to William Ruxton, Johnson was to receive four thousand dollars in the transaction. Mr. Carver gave a check or order on Mr. Ruxton for two thousand dollars, which I learned in some way—how I don't exactly recollect—was afterwards cashed.

98 int. What was the date of that check or order, and by whom was it cashed?

Ans. I don't know what the date was; I never saw the check myself, and, as I have already stated, it was cashed by Mr. Ruxton.

99th int. Do you know whether Mr. Johnson received the balance of the four thousand dollars? and if so, when and how?

200 Ans. I don't know that he did. I was not cognizant of the whole transaction from beginning to end.

100th. Was the check or order given by Mr. Carver to the complainant Johnson, before or after the conveyance by Johnson to Clapp?

Ans. I have no distinct recollection on that point.

101st. Did you ever hear any conversation between the complainant Johnson and the defendants, or any of them, about the balance of two thousand dollars? If so, state between whom, when and where that conversation took place, and all that was said.

Ans. The contract, as near as I recollect it, was the conveyance of the property was in consideration of four thousand dollars, over and above the Green mortgage, so called, Johnson in the mean time saying that there were no encumbrances on the property that he knew of. About that time Mr. Johnson was informed that there were encumbrances or lien upon the property, at which he expressed surprise. These encumbrances amounted to a large sum; precisely how much I do not recollect. They wanted Mr. Carver or the purchaser, whoever it was, Mr. Johnson to give a warranty deed. This he would not do; he would only give a quitclaim. That is the substance of what I recollect.

102. What, if anything, was said between Johnson and the defendants
201 or any of them about the payment of the balance of two thousand dollars? State all you know and heard in this respect, giving the names of the defendants or such of them as conversed with Johnson about this two thousand dollars balance.

(Objected to, because this question assumes that there was a balance of two thousand dollars.)

Ans. I don't know which you call the balance or which you call the principal or main sum. There was a certain amount which the purchaser claimed should go towards liquidating the liens or claims against the property, if not all, which went to make up a part of the four thousand dollars. As to any particular conversation in this connection with this subject or matter, I have no distinct recollection.

103d int. Do you remember of the complainant Johnson calling on Mr. Clapp at his office after having received the check or order of two thousand dollars given him by Mr. Carver on Mr. Ruxton, with reference to the payment of the same? If so, state when and all that was said and done by and between Mr. Johnson and Mr. Clapp on that occasion.

Ans. I recollect Mr. Johnson's calling in connection with the check, but what was said or done between Mr. Clapp and Mr. Johnson I cannot
202 state, for I do not recollect distinctly.

104th. Was there anything said about Mr. Ruxton being ready to pay the check on that occasion?

Ans. Immediately prior to this, as I recollect the order of events, Mr. Carver came into the office and remarked in my presence to either Mr. Clapp or Mr. Johnson that that check would be paid if he would take it round to Mr. Ruxton, or he guessed it would. I do not recollect what transpired subsequent to that time in regard to the check, only that I learned it was paid.

105th. Did you hear Major Johnson, after the time and occasion you have mentioned and after you understood that the check had been paid, asking or demanding of Mr. Carver or Mr. Clapp the further sum or balance of two thousand dollars, which is to say the balance of the four thousand dollars over and above the check? If so, state when, and if any objection was made to the payment thereof, state fully and particularly what the objection was and by whom the same was made.

Ans. I never heard any demand that I recollect of.

106th. Did you hear any conversation between Mr. Johnson and Mr. Carver or Mr. Clapp, after Mr. Johnson had received the check or order spoken of, and after you had learned the same was paid? If so, state when and where the same took place, and all that was said, if anything,
203 between them about the balance of four thousand dollars over and above the check.

Ans. I cannot state whether I ever heard any conversation between them subsequent to the payment of the check.

107th. Between whom and what was said to the complainant about the liens and judgments you have mentioned?

Ans. I cannot say who apprised him of these liens. I presume Mr. Carver did, for he had an abstract of the lands about the office.

108th. What was the nature of the liens and judgments to which you refer?

Ans. There were tax liens or sales and judgments.

109th. Who was the holder, or claimed to be the owner of these liens?

(The solicitors for the defendants object to this question on the ground that it is not proper under the leave given by the court, and also that this is not competent proof as to what were liens on the property.)

(Mr. McKinnon states that he asks these questions as inducement, and expects to show that the liens and judgments referred to were claimed and used as an offset for the $2,000 balance of the $4,000, and that the $2,000 balance was not paid by any of the defendants to the complainant.)

204 Ans. The parties to the judgments were all strangers to me except the complainant Johnson. I had only known him a short time, and I did not give any particular attention to it, as I was not employed in the case, and I only know what I was compelled to hear, or overhear, if you

like. As to the owners of the judgments and tax liens, I know nothing about.

110 int. State fully and particularly how the tax liens and judgments came to be discovered between the complainant and the defendants, or some of them, in connection with the $4,000 which compl't was to receive over and above the Green mortgage incumbrance.

Ans. As Mr. Johnson had represented the premises free and clear of incumbrance it was proposed that he should allow for these liens. This is how, I suppose, the matter came to be discussed.

111 int. Who discussed or proposed that matter to the complainant?

Ans. I don't recollect.

112 int. What right or sort of claim did the defendants contend for or on behalf of the liens mentioned against the $4,000?

Ans. I don't recollect that that discussion ever came up in my presence.

113 int. How did they come to claim of the complainant that the liens and judgments mentioned were an offset, or should be deducted from the $4,000? Answer fully and particularly.

205 Ans. I don't know, except that it was because Mr. Johnson had represented the premises free and clear.

114 int. Do you know from your own knowledge, or from any information you may have received from the defendants or either of them, whether the complainant Johnson received upon that transaction the full sum of $4,000 in money? State all you do know in this respect, either from your own knowledge or from information so derived.

Ans. I can't state what was done out of my presence. The only fact that I was cognizant of was the settlement. After, as I recollect it, or near the time, one side or the other, of the payment of the check that was, that Mr. Johnson was to have $150 more. The computations, process of reckoning, and the mode of getting at the settlement I had no knowledge of, except as they were displayed on a memoranda made at the time.

115 int. Did or did not the complainant Johnson at the time of the settlement and giving of a receipt for $150, and in full settlement as stated upon the face of that receipt, to Mr. Clapp and Mr. Carver claim that there was still due him the sum of $2,000, balance of the $4,000, and did he not after giving that receipt make some inquiry of Mr. Clapp as to whether

206 that receipt cut off his right to the said $2,000? Please answer this question fully and particularly.

Ans. I don't recollect of hearing Mr. Johnson claim for an additional $2,000. I did hear Mr. Johnson inquire on the same day, but subsequently to the signing of the receipt, or the next day, and after he had been out and returned, of Mr. Clapp if that receipt was in settlement of all claims between himself and Mr. Carver. Mr. Clapp told him he so considered it, and intended it so to be. Nothing further of importance transpired. He left almost immediately.

116 int. What do you mean by the words $150 more in your answer to int. 114?

Ans. I mean $150 over and above what he had received already. That is precisely what I mean.

Cross-examined by Mr. Le Moyne.

12 c. int. State if you did not take a deed to Major Johnson some time after the property had been conveyed to Mr. Ruxton, the object of which deed was to correct some supposed misdescription in some of the land conveyed?

(Objected by Mr. McKinnon, as not being in cross-examination of any-

thing directed by the order, and asks the master to rule it out as improper.)
Ans. I did.

207 13 c. int. Did Mr. Johnson at that time claim or demand that there was any balance due him for the purchase-money of said premises?
Ans. Not that I recollect of.

Examination resumed by Mr. McKinnon.

117 int. Did Mr. Johnson execute the deed you carried to him mentioned in c. int. 12?
Ans. He did not.
117 int. What reasons did he give for not executing the same?
Ans. He said he had found his bank-book, and that he had taken counsel and advice on the subject, and that he had been swindled, or language to that effect. There were expletives there that it is not necessary to put in.

E. G HOOK.

Subscribed March 17, 1864.

J. T. MOULTON.

All which is respectfully submitted.

J. T. MOULTON,
Master in Chancery U. S. Cir. Court, N. Dist. of Illinois.

Endorsed. Filed March 17, 1864.

WM. H. BRADLEY, *Clk.*

The following are the Exhibits referred to in the testimony in this cause:

EXHIBIT A.

208 On the cover of the book is the following: W. F. Johnson in ac. with B. F. Carver.
The following are the entries made in said book:

W. F. Johnson in ac. with B. F. Carver.

CR.

1860. Ap'l 26.	To your note, 5,000—500		$4,500
June 11.	To Cash		10,245

DR.

1860. April 26.	By ch'k		$500	
May 7.	By do		600	
" 18.	By do		200	
" 24.	By do		100	
" 29.	By do		100	
" 30.	By do		250	
June 6.	By do		150	
" 9.	By do		800	
" 14.	By do		1,000	
	The above vouchers ret'd		3,700	
June 15.	By ch'k		500	
" 20.	By Laflin & Brown		1,116	26
July 5.	By ch'k		400	
" 6.	By do		278	94

Ja.	22.	By do	3,426	25
"		By do	41	39

Johnson *vs.* Carver and als., Exhibit A.

J. T. MOULTON, *Master, &c.*

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EXHIBIT B.

On cover of book: B. F. Carver & Co. in account with W. F. Johnson, esq.

Entries made in bank book:

B. F. Carver & Co. in acc't with W. F. Johnson, esq.

1861.	Jan'y 14.	Dep.—$803 56, $52 35	$857	86
	Feb'y 18.	Dep	100	
			957	86
		9 checks ret'd—$25, $20, $150, $50, $20, $70, $150, $30, $50	565	00
		Balance	392	86
			957	86
1861.	March 1.	To balance	392	86
	Ap'l 13.	To dis't	7,100	
	May 22.		10	
	June 24.		497	
	Dec. 30.		939	12
1862.	M'ch 19.	Sales gold	118	36
	May 17.	Balance	441	38
			9,498	72
		43 ch's ret'd—$20, $25, $50, $100, $16, $35, $32, $6,400, $20, $700, $200, $40 75, $25, $25, $100, $150, $100, $83 96, $130, $7 50, $6, $100, $100, $40, $100, $50, $100, $25, $30, $150, $32 80, $1 81, $110, $10, $10, $110, $110, $5 95, $110, $10, $110, $10 20, $15, $1 75	9,498	72
1862.	May 17.	By balance	441	38
1862.	June 5.	To nett proceeds of gold, H. A. Stone & Son	$367	
		Balance	108	65

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		475	65
	Forward	$441	38
	2 checks ret'd—$30, $4 27	34	27
		475	65
1861. June 6.	By balance	108	65

Johnson *vs.* Carver and als., Exhibit B. J. T. MOULTON.

EXHIBIT C.

$7,384. CHICAGO, *April 12th*, 1861.

Four months after date I promise to pay to the order of myself seven thousand three hundred and eighty-four dollars, at the Metropolitan Bank, New York. Value received.

W. F. JOHNSON.

Endorsed: 628. Aug. 15th, 1861, W. F. Johnson. $7,384.

Received on within Aug't 15th, 1860, one thousand three hundred sixty-three 17-100 dollars ($1,363 17.)

Received on within Aug. 28th, 1861, two thousand six hundred eighty 55-100 dollars (2,680 55.)

W. F. JOHNSON.

211 Received on within, Dec. 23d, three thousand three hundred and forty and 28-100 dollars, bal'c. principal due on within note, and one hundred twenty and 60-100 dollars as bal'c. interest—$4,460 88.

Exhibit C.

J. T. MOULTON.

EXHIBIT D.

Coddington Billing, esq.:

Please deliver to Mr. Johnson his Denver deeds, and I will arrange the overdr'ft of his on my return.

Chicago, Dec. 15, '62.

Y'rs, B. F. CARVER.

Endorsed: This is admitted as Exhibit D, and that it is in the handwriting of Carver, and that upon it the collateral then in the hands of Billings were delivered to Johnson.

J. V. LE MOYNE,
Sol's for Ruxton and Carver.
MERRICK & McKINNON,
Sol's for Johnson.
W. F. JONHSON.

Deed to Carver from Coles not recorded, and is not to be recorded, but to be given up to Wm. Johnson.

J. CLAPP.

212 EXHIBIT 1.

CHICAGO, *Dec.* 17, 1862.

Rec'd of James Clapp one hundred and fifty dollars, in full settlement of all demand and accounts between me and B. F. Carver and said Clapp.

W. F. JOHNSON.

Johnson *vs.* Carver, Exhibit 1.

J. T. MOULTON.

EXHIBIT 2.

1, 116 26	500	782 16	1, 178 94
450	200	50	1, 000

800	782 16	200	200
700	25	1,015	1,500
Paid Greene			1,000
			11,499 52
Sold ch'k in Clapp's hands			3,467
			14,966 52

I have some other small checks which I cannot find to-day.

	Received from Johnson for his cr	$8,000
213	Paid him $2,000, and gave him cr. for 8 M.	
	To cr. for mortgage	4,500
		12,500

Overpaid him about $2,500.

I will also pay B. F. Carver & Co. this balance due from him.

Johnson *vs.* Carver, Exhibit 2.

J. T. MOULTON.

EXHIBIT 3.

Know all men by these presents that I, William F. Johnson, of the city of Chicago, county of Cook, Illinois, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, James Clapp, of the same place, my true and lawful attorney for me and in my name, place, and stead to sell and dispose of for the sum of four thousand dollars ($4,000 00) a certain promissory note made by me, dated the 30th day of April, A. D. 1860, for $5,000 00 and int. at 10 per cent. per annum after maturity, payable one year after date, to the order of myself, at the Metropolitan Bank, New York City, N. Y., and by me endorsed and secured by trust deed to the said James Clapp, dated the said 30th day of April, 1860, upon the following described property, to wit: All that part of the southeast fract. ($\frac{1}{4}$) of sec. 27, T. 39 north, of range 14 east of 3d P. M.; beginning on the south line of said tract 14 76-100 chains east of the southwest corner thereof; thence running north 16$\frac{1}{2}$° west 5 50-100 chains; thence east, parallel with
the south line of said $\frac{1}{4}$ sec., 10 45-100 chains, more or less, to Lake
214 Michigan; thence southerly, along Lake Michigan, to the south line aforesaid; thence westerly to the place of beginning, containing 5 53-100 acres; also the northwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of section 1, T. 39 north, of range 13 east of the 3d P. M.; all of the above lands situate in the county of Cook, and State of Illinois, giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully, to all intents and purposes, as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I hereunto set my hand and seal the thirtieth day of April, in the year one thousand eight hundred and sixty, (1860.)

[SEAL.] W. F. JOHNSON.

Sealed and delivered in the presence of.

Johnson *vs.* Carver, "Exhibit 3."

J. T. MOULTON.

215 "EXHIBIT 4."

CHICAGO, *April* 12, 1860.

Edward I. Tinkham & Co.:

Pay Major Johnson or order three hundred dollars, and charge the same to account of—

$300. JAMES C.

Endorsed: W. F. Johnson.

Johnson *vs.* Carver, "Exhibit 4."

J. T. MOULTON.

"EXHIBIT 5."

CHICAGO, *April* 25, 1860.

Edward I. Tinkham & Co.:

Pay Wm. F. Johnson, esq., or bearer, fifty dollars, and charge the same to account of—

$50. JAMES C.

Johnson *vs.* Carver, "Exhibit 5."

J. T. MOULTON.

EXHIBIT 6.

CHICAGO, *April* 26, 1860.

Edward I. Tinkham & Co.:

216 Pay Wm. F. Johnson or bearer two hundred and fifty dollars and charge the same to account of.

$250. JAMES CL.

Johnson *vs.* Carver, Exhibit 6.

J. T. MOULTON.

EXHIBIT 7.

This indenture, made this ninth day of December, in the year of our Lord one thousand eight hundred and sixty-two, (A. D. 1862,) between William F. Johnson, of the city of Chicago, party of the first part, and Eliza Johnson, his wife, and James Clapp, of the same place, party of the second part, witnesseth, that the said party of the first part, in consideration of one dollar ($1 00) in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, by these presents do release, alien, convey, and quitclaim unto the said part of the second part, and to his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following described pieces of land, situated in the county of Cook, and State of Illinois, described as follows, to wit: One undivided half (½) of the southwest quarter (¼) of section twenty-nine, (29,) township thirty-nine (39) north, range thirteen east of the third principal meridian; also five (5) acres and thirty-three (33) one hundredths (100) in the southeast fractional quarter (¼) of section twenty-seven,

217 (27,) township thirty-nine (39) north, range fourteen east of third principal meridian; also the northwest quarter (¼) of the northwest ¼ of section one, (1,) township thirty-nine (39) north, range thirteen east of the third principal meridian. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatever, of the said part of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hereunto set his hand and seal the day and year first above written.

[SEAL.] W. F. JOHNSON.
[SEAL.] ELIZA JOHNSON.

Signed, sealed, and delivered in presence of.

STATE OF ILLINOIS, *City of Chicago, Cook County, ss:*

I, Philip A. Hoyne, a notary public in and for the said city of Chicago, in the county and State aforesaid, do hereby certify that William F. Johnson and Eliza, his wife, personally known to me as the same persons whose names are subscribed to the foregoing deed, appeared before me this day in person, and acknowledged that they executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set
218 forth; and the said Eliza Johnson, wife of the said William F. Johnson, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same and relinquished her dower to the lands and tenements therein mentioned without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this tenth day of December, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.] PHILIP A. HOYNE, *Notary Public.*

STATE OF ILLINOIS, *County of Cook:*

This instrument was filed for record on the seventeenth day of December, A. D. 1862, at the hour of o'clock . . m., and duly recorded in Book 247 of Deeds, page 241.

WM. L. CHURCH, *Cl'k.*

Johnson *vs.* Carver, Exhibit 7.

J. T. MOULTON.

EXHIBIT 8.

This indenture, made this twenty-third day of March, in the year
219 of our Lord one thousand eight hundred and sixty-one, (A. D. 1861,) between William F. Johnson, of the city of Chicago, county of Cook, and State of Illinois, of the first part, and Benjamin F. Carver, of the same city, county, and State, party of the second part, witnesseth, that the said party of the first part, in consideration of dollars ($) in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, by these presents does release, alien, convey, and quitclaim unto the said party of the second part, and to his heirs and assigns forever, all the right, title, interest, claim, and demand which the said party of the first part has in and to the following described pieces of land, situated in the county of Cook and State of Illinois, described as follows, to wit: The one equal undivided one half part of the southwest quarter of section twenty-nine, (29,) township thirty-nine (39) north, of range thirteen (13) east of the third principal meridian. Also a part of the southeast fractional quarter of section twenty-seven, (27,) in township thirty-nine (39) north, range fourteen (14) east, and better known and described as follows, viz: Beginning on the south line of said quarter section fourteen (14) chains and seventy (70) links east from the southwest corner of the said quarter section, and running from thence north sixteen and a half degrees (16½°) west five chains and a half; thence east, parallel with the south line of said quarter section, ten chains and forty-five and a

220 half links, more or less, to Lake Michigan; thence southerly, along said lake, to the south line of said quarter section; thence west to the place of beginning, saving and excepting that portion of the above-described tract heretofore sold and conveyed by said Johnson to the Illinois Central Railroad Company. Also the northwest quarter of the northwest quarter of section, (1,) township thirty-nine, (39,) range thirteen (13) east of third principal meridian.

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estate, right, title, interest, and claim whatever of the said party of the first part, either in law or equity, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hereunto sets his hand and seal the day and year first above written.

W. F. JOHNSON. [SEAL.]
ELIZA C. JOHNSON. [SEAL.]

Signed, sealed, and delivered in the presence of—
DRUCILLA C. JOHNSON.
CHAS. C. JOHNSON.

STATE OF ILLINOIS, *City of Chicago, Cook County, ss:*

I, Philip A. Hoyne, a notary public in and for the city of Chicago, in said county, in the State aforesaid, do hereby certify that William F. John-
221 son and Eliza C., his wife, who are personally known to me as the real persons whose names are subscribed to deed, appeared before me this day, in person, and acknowledged that he executed and delivered the said deed as their free and voluntary act, for the uses and purposes therein set forth.

And the said Eliza C. Johnson, wife of the said William F. Johnson, having been by me examined separate and apart and out of the hearing of her husband, and the contents and meaning of the said deed having been by me made known and fully explained to her, acknowledged that she had freely and voluntarily executed the same, and relinquished her dower to the lands and tenements therein mentioned, without compulsion of her said husband, and that she does not wish to retract the same.

Given under my hand and notarial seal this ninth day of April, in the year of our Lord one thousand eight hundred and sixty one, (A. D. 1861.)

[SEAL.] PHILIP A. HOYNE, *Notary Public.*

STATE OF ILLINOIS, *County of Cook:*

This instrument was filed for record the 22d day of April, at the hour of o'clock, 1861, and duly recorded in Book 212 of Deeds, page 372.

WM. L. CHURCH, *Clk.*

Johnson *vs.* Carver, Exhibit 8.

J. T. MOULTON.

222 EXHIBIT 9.

No. 1. CHICAGO, *May* 25, 1861.

B. F. Carver & Co.:

Pay Mrs. Johnson or bearer twenty-five dollars, and charge account of—

W. F. JOHNSON.

$25 00 par money.
Endorsed: Mrs. W. F. Johnson.
Johnson *vs.* Carver, "Exhibit 9."

J. T. MOULTON.

EXHIBIT 10.

No. —. CHICAGO, *Aug.* 31, 1860.

F. Granger Adams, 44 Clark street:

Pay to W. F. Johnson, paper, or bearer, fifteen hundred dollars, and charge the same to account of— B. F. CARVER.

$1,500.

Johnson vs. Carver, "Exhibit 10."

J. T. MOULTON.

EXHIBIT 11.

CHICAGO, *July* 17, 1860.

B. F. Carver, esq.:

Pay the order of G. D. Kellogg two hundred dollars.

223 W. F. JOHNSON.

Endorsed: Geo. D. Kellogg.

Exhibit 11. J. T. MOULTON.

EXHIBIT 12.

B. F. Carver, esq.:

Pay to Mrs. W. F. Johnson, in person, two hundred doll's.

W. F. JOHNSON.

Chicago, 17 July, 1860.

Endorsed: Thirty doll's paid Nov. 23d, 1860. Twenty doll's paid Dec. 1st. Rec. balance on the within order.

Johnson vs. Carver, "Exhibit 12."

J. T. MOULTON.

EXHIBIT 13.

$782 16 CHICAGO, *July* 16, 1860

Pay to the order of B. F. Carver seven hundred eighty-two 16-100 dollars, value received, and charge the same to account of—

W. F. JOHNSON.

To Marine Bank.

Johnson vs. Carver, "Exhibit 13."

J. T. MOULTON.

224 EXHIBIT 14.

No. —. CHICAGO, *July* 15, 1860.

Chicago, Marine and Fire Insurance Company:

Pay to W. F. Johnson or bearer seven hundred eighty-two 16-100 dollars.

$782 16.

B. F. CARVER.

Johnson vs. Carver, Exhibit 14.

J. T. MOULTON.

EXHIBIT 15.

No. —. CHICAGO, *July* 12, 1860.

Chicago Marine and Fire Insurance Company:

Pay to Wm. F. Johnson or bearer thirty-four hundred sixty-seven 64-100 dollars.

$3,467 64. B. F. CARVER.

Johnson vs. Carver, "Exhibit 15."

J. T. MOULTON.

EXHIBIT 16.

No. —. CHICAGO, *July* 6, 1860.

Chicago Marine and Fire Insurance Company:

Pay to W. F. Johnson's c'k or bearer eleven hundred and seventy-eight 94-100 dollars.

$1,178 94. B. F. CARVER.

Johnson *vs.* Carver, "Exhibit 16."

J. T. MOULTON.

225 EXHIBIT 17.

No. —. CHICAGO, *June* 21, 1860.

Chicago Marine and Fire Insurance Co.:

Pay to ord. B. F. Carver ten hundred fifteen dollars.

$1,015 00. W. F. JOHNSON.

Johnson *vs.* Carver, Exhibit 17.

J. T. MOULTON.

EXHIBIT 18.

No. —. CHICAGO, *June* 20, 1860.

Chicago Marine and Fire Insurance Co.:

Pay to A. B. & Co., for Johnson or bearer, eleven hundred and sixteen 26-100 dollars.

$1,116 26. B. F. CARVER.

Johnson *vs.* Carver, Exhibit 18.

J. T. MOULTON.

EXHIBIT 19.

NEW BEDFORD, *July* 8, 1861.

This is to certify that I have received of B. F. Carver, esq., five hundred dollars on account of principal, and four hundred and fifty dollars for one year's interest in advance on Wm. F. Johnson's note, dated Chicago, April 30, 1861, payable at the Metropolitan Bank, New York, one year after date, for the sum of five thousand dollars, all which is endorsed on said note, and also received seventeen 95-100 dollars as interest on deferred payments and three 8-100 for telegraphic despatches.

D. R. GREENE.

Johnson *vs.* Carver, Exhibit 19.

J. T. MOULTON.

EXHIBIT 20.

Chicago Marine and Fire Insurance Co.

Date DEC. 22, 1860.

Deposited by W. F. Johnson:

Gold and eastern currency checks, Carver, $1,015.

226 RESPONDENTS' TESTIMONY.

Circuit court of the United States of America, northern district of Illinois, in chancery.

WILLIAM F. JOHNSON
vs.
BENJAMIN F. CARVER.

Pursuant to an order of the said court in the above-entitled cause, made

on the seventh day of September, A. D. 1863, wherein and whereby it was referred to J. Tilden Moulton, master in chancery of said court, to take the evidence in said cause and report the same to the court, I, J. Tilden Moulton, the master aforesaid, do hereby report that on the eighteenth day of December, A. D. 1863, I was attended by Mr. Le Moyne for respondents and by Mr. McKinnon for complainant, and by James F. Olcott, a witness on behalf of respondents. And the said Olcott was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

1 int'y. What is your name, age, residence, and occupation?

Ans. My name is James F. Olcott; twenty-one years old; reside in Chicago; I am clerk to William Ruxton.

2d int'y. State in what business you were engaged in December, 1862.

Ans. I was acting as clerk in the banking-house of Mr. Wm. Ruxton.

3d int'y. State if you know William F. Johnson and James Clapp.

227 If so, how long have you known them?

Ans. I know Mr. Johnson, and have known him some year and a half, and Mr. Clapp over a year.

4th int'y. State if you were present at any interview during the month of December, 1862, between said Johnson, Clapp, and Ruxton. If so, state about when such interview took place, where it took place, and what was said by the parties.

Ans. I was. The interview took place, to the best of my knowledge, on December 15th, 1862, in the office of Ruxton & Co. Mr. Johnson told Mr. Clapp to deed the property to Mr. Ruxton and deliver the deeds to Mr. Ruxton on payment of a certain sum.

5th int'y. Was the sum of money to be paid named? If so, what was it, (the sum to be paid?)

Ans. It may have been named, but I don't know the amount.

6th int'y. At that interview did you hear Mr. Ruxton say anything to Johnson about being ready to pay the amount due Johnson when he got his deed? If so, what did he say in that respect, and what answer did Johnson make?

Ans. Mr. Ruxton told Johnson that he would pay him the amount as soon as he had the deeds. Johnson said he would have Mr. Clapp make them out and deliver them to Ruxton.

7th int'y. State what you know, if anything, in regard to Mr. Rux-

228 ton having paid to Mr. Johnson any money that day, before referred to by you, when the interview took place.

Ans. Mr. Ruxton paid Mr. Johnson the sum required by him, Johnson.

8th int'y. State the amount paid by Ruxton to Johnson at the time referred to.

Ans. The sum of two thousand dollars.

1st cross-int'y. How long have you lived in Chicago?

Ans. Thirteen years.

2d cross-int'y. How long have you known Mr. Ruxton?

Ans. Some three years.

3d cross-int'y. How long have you been in the employ of Ruxton & Co.?

Ans. Two years next March.

4th cross-int'y. In what business was Mr. Ruxton engaged when you first knew him, and where?

Ans. Banking business; H. A. Tucker & Co., in Chicago.

5th cross-int'y. Was he a member of the firm of H. A. Tucker & Co. at that time, and in what capacity did he act?

Ans. I do not know whether he was a member of the firm; he acted as cashier, I believe.

6th cross-inty. Do you know Mr. Benjamin F. Carver?

Ans. Yes, sir.

7th cross-int'y. How long have you known him, and where?

Ans. Six years, as cashier of the Marine Bank.

8th cross-int'y. In what business and where were you engaged before you came into the employ of Ruxton & Co.?

Ans. I was unemployed.

9th cross int'y. Had you ever been engaged in any business before
229 that time? If so, state in what business, where, and with whom.

Ans. In 1857 I was at work for J. C. Walker, agent Lake Navigation Company; in 1858, telegraph company; in 1859, Charles E. Chase, agent American Transportation Company; in 1861, Olcott & Matthews's tannery.

10th cross-int'y. In what capacity did you act for Mr. Ruxton in December, 1862?

Ans. As clerk.

11th cross-int. What was your business as his clerk—what particularly during that time?

Ans. When he was not there, as teller; also as messenger.

12th cross-int. Are you acquainted with William F. Johnson?

Ans. By sight.

13th cross-int. Are you acquainted with William F. Johnson? Answer yes or no.

Ans. I am.

14th cross-int. Why did you, in your answer to cross-interro'y 12, say you were acquainted with him by sight if you are in fact acquainted with him, as you state in the last interogatory?

Ans. Because I never had any conversation with him, although I knew him.

15th cross-int. If you never had any conversation with him, why do you say you are acquainted with him?

Ans. I not only had him pointed out to me, but I have known him for a number of years.

230 16th cross-int. Do you know whether Mr. Ruxton, prior to December, 1862, had any money transactions with Mr. Carver? And if so, state what was the nature of the same.

Ans. None that I know of, although he may have had.

17th cross-int'y. You say you were present at an interview in December, 1862, between Johnson, Ruxton, and Clapp. What was that interview about?

Ans. In regard to some property which was to be deeded to W. Ruxton on payment of a certain sum of money.

18th cross-int'y. Who was to deed it to Mr. Ruxton?

Ans. Johnson told Clapp to.

19th cross-int'y. Why was it to be deeded to him?

Ans. Because Mr. Ruxton was to pay Mr. Johnson for it.

20th cross-int. How do you know that fact?

Ans. Because Johnson told Mr. Ruxton he would have Mr. Clapp give him those deeds on payment of that money.

21st cross-int. Who all were present at that interview?

Ans. Ruxton, Johnson, Clapp, and myself.

22d cross-int. Was that the only interview between them?

Ans. It was the only one that I know of.

23d cross-int. Who made the arrangement with Mr. Johnson for Mr. Ruxton?

Ans. That is more than I know.

24th cross-int. Did you ever hear any conversation between Mr. Carver and Mr. Ruxton about that deed?

231 Ans. I think there was.

25th cross-int. When and where?

Ans. In the office of Ruxton & Co.; I could not say as regards the date.

26th cross-int. State as near as you can.

Ans. It may have been a few days before or after December 15th.

27th cross-int. Who were present at the conversation?

Ans. I was, but was busy.

28th cross-int. State, if you can, what was said about it between them.

Ans. I cannot say anything; I don't know of anything that was said at the time.

29th cross-int. How did you come to hear them talking about it?

Ans. I was near them counting silver at the time.

30th cross-int. Do you know the land, or any of it, described in the deed from Clapp to Ruxton?

Ans. I do not.

31st cross int. Did you ever hear Mr. Ruxton say what land was deeded to him thereby?

Ans. Not that I know of.

32d cross-int. How many interviews were there to your knowledge between Ruxton and Carver about the deed which Clapp was to make to Ruxton?

Ans. I cannot say.

33d cross-int. How many do you remember of?

Ans. There may have been two or ten; I don't know.

34th cross-int. Do you swear there were ten interviews between

232 them about that deed to your knowledge?

Ans. No; I would not.

35th cross-int. How many times did you see Johnson in Ruxton & Co.'s office in December, 1862?

Ans. I cannot say.

36th cross-int. State some number as near as you can.

Ans. Some four or five.

37th cross-int. What took place between Ruxton and Johnson on those four or five occasions that you swear to?

Ans. At one time he told Clapp to deed the property to Ruxton.

38th cross-int. Is that the only conversation you can remember between Johnson and Ruxton?

Ans. No, sir.

39th cross-int. Well, sir, will you now please to state what other conversation took place between them, and when the same took place?

Ans. There was conversation in regard to the $2,000 Mr. Ruxton paid Mr. Johnson.

40th x int. State all that conversation, and when the same took place.

Ans. It took place the same day, December 15th. That is all the conversation that I know of.

41 x int. Why do you say there were four or five conversations between them, if that was all and the only one?

(Objected to, on the ground that the witness has not stated, as implied in the interrogatory, that that was the only conversation between the

233 parties.)

Ans. He was in there, but I had no occasion to remember all his conversation, being busy at the time.

42d x int. Will you please give all that was said at the interview that took place between Ruxton, Johnson, and Clapp on the 15th December, 1862?

6th cross-inty. Do you know Mr. Benjamin F. Carver?

Ans. Yes, sir.

7th cross-int'y. How long have you known him, and where?

Ans. Six years, as cashier of the Marine Bank.

8th cross-int'y. In what business and where were you engaged before you came into the employ of Ruxton & Co.?

Ans. I was unemployed.

9th cross int'y. Had you ever been engaged in any business before
229 that time? If so, state in what business, where, and with whom.

Ans. In 1857 I was at work for J. C. Walker, agent Lake Navigation Company; in 1858, telegraph company; in 1859, Charles E. Chase, agent American Transportation Company; in 1861, Olcott & Matthews's tannery.

10th cross-int'y. In what capacity did you act for Mr. Ruxton in December, 1862?

Ans. As clerk.

11th cross-int. What was your business as his clerk—what particularly during that time?

Ans. When he was not there, as teller; also as messenger.

12th cross-int. Are you acquainted with William F. Johnson?

Ans. By sight.

13th cross-int. Are you acquainted with William F. Johnson? Answer yes or no.

Ans. I am.

14th cross-int. Why did you, in your answer to cross-interro'y 12, say you were acquainted with him by sight if you are in fact acquainted with him, as you state in the last interogatory?

Ans. Because I never had any conversation with him, although I knew him.

15th cross-int. If you never had any conversation with him, why do you say you are acquainted with him?

Ans. I not only had him pointed out to me, but I have known him for a number of years.

230 16th cross-int. Do you know whether Mr. Ruxton, prior to December, 1862, had any money transactions with Mr. Carver? And if so, state what was the nature of the same.

Ans. None that I know of, although he may have had.

17th cross-int'y. You say you were present at an interview in December, 1862, between Johnson, Ruxton, and Clapp. What was that interview about?

Ans. In regard to some property which was to be deeded to W. Ruxton on payment of a certain sum of money.

18th cross-int'y. Who was to deed it to Mr. Ruxton?

Ans. Johnson told Clapp to.

19th cross-int'y. Why was it to be deeded to him?

Ans. Because Mr. Ruxton was to pay Mr. Johnson for it.

20th cross-int. How do you know that fact?

Ans. Because Johnson told Mr. Ruxton he would have Mr. Clapp give him those deeds on payment of that money.

21st cross-int. Who all were present at that interview?

Ans. Ruxton, Johnson, Clapp, and myself.

22d cross-int. Was that the only interview between them?

Ans. It was the only one that I know of.

23d cross-int. Who made the arrangement with Mr. Johnson for Mr. Ruxton?

Ans. That is more than I know.

24th cross-int. Did you ever hear any conversation between Mr. Carver and Mr. Ruxton about that deed?

231 Ans. I think there was.

25th cross-int. When and where?

Ans. In the office of Ruxton & Co.; I could not say as regards the date.

26th cross-int. State as near as you can.

Ans. It may have been a few days before or after December 15th.

27th cross-int. Who were present at the conversation?

Ans. I was, but was busy.

28th cross-int. State, if you can, what was said about it between them.

Ans. I cannot say anything; I don't know of anything that was said at the time.

29th cross-int. How did you come to hear them talking about it?

Ans. I was near them counting silver at the time.

30th cross-int. Do you know the land, or any of it, described in the deed from Clapp to Ruxton?

Ans. I do not.

31st cross int. Did you ever hear Mr. Ruxton say what land was deeded to him thereby?

Ans. Not that I know of.

32d cross-int. How many interviews were there to your knowledge between Ruxton and Carver about the deed which Clapp was to make to Ruxton?

Ans. I cannot say.

33d cross-int. How many do you remember of?

Ans. There may have been two or ten; I don't know.

34th cross-int. Do you swear there were ten interviews between

232 them about that deed to your knowledge?

Ans. No; I would not.

35th cross-int. How many times did you see Johnson in Ruxton & Co.'s office in December, 1862?

Ans. I cannot say.

36th cross-int. State some number as near as you can.

Ans. Some four or five.

37th cross-int. What took place between Ruxton and Johnson on those four or five occasions that you swear to?

Ans. At one time he told Clapp to deed the property to Ruxton.

38th cross-int. Is that the only conversation you can remember between Johnson and Ruxton?

Ans. No, sir.

39th cross-int. Well, sir, will you now please to state what other conversation took place between them, and when the same took place?

Ans. There was conversation in regard to the $2,000 Mr. Ruxton paid Mr. Johnson.

40th x int. State all that conversation, and when the same took place.

Ans. It took place the same day, December 15th. That is all the conversation that I know of.

41 x int. Why do you say there were four or five conversations between them, if that was all and the only one?

(Objected to, on the ground that the witness has not stated, as implied in the interrogatory, that that was the only conversation between the

233 parties.)

Ans. He was in there, but I had no occasion to remember all his conversation, being busy at the time.

42d x int. Will you please give all that was said at the interview that took place between Ruxton, Johnson, and Clapp on the 15th December, 1862?

Ans. All that I remember is, Mr. Johnson telling Mr. Clapp to deed that property to Mr. Ruxton.

43d x int. Can't you remember anything else that was said, or do you, at that interview?

Ans. That meeting was closed then; after that Mr. Johnson left.

44th x int. Do you remember anything else that was said at that time? Answer yes or no.

Ans. Only Mr. Johnson said he would see that Mr. Ruxton had these deeds on payment of the money.

45th x int. Was there anything else said at that time between the parties? Answer yes or no.

Ans. There may have been.

46th x int. Do you remember anything else that was said at that interview?

Ans. Not at present.

47th x int. Then, the only thing that you can remember having been said at the interview between Johnson, Ruxton, and Clapp, on the 15th December, 1862, is that Johnson said that he would see Mr. Ruxton had the deed on payment of the money, and that he told Mr. Clapp to make the deed. Is that all?

234 Ans. All that I can remember.

48th x int. How was it that Johnson, Clapp, and Ruxton came to be together on that occasion?

Ans. I don't know, sir.

49th x int. Did you ever hear any conversation before that time between Clapp and Ruxton about that deed?

Ans. None that I can remember of.

50 x int. When did you first hear anything about the deed?

Ans. I cannot name the date.

51 x int. Was it before or after the interview between Johnson, Ruxton, and Clapp?

Ans. I don't know.

52 x int. Who was it between?

Ans. What?

53 x int. Who was the interview between about that deed, the date of which you say, in answer to x interrogatory 50, you cannot remember?

Ans. I don't know.

54 x int. Why do you say in answer to x interrog. 50 that you cannot remember the date of the conversation about the deed which you first heard, if you have sworn to the truth in your answer to the last iterrog'y?

Ans. I have nothing to remember it by.

55 x int. Can't you tell between whom the conversation which you first heard about the deed from Clapp to Ruxton took place?

Ans. No, sir.

235 56 x int. Was it before or after the interview between Ruxton, Clapp, and Johnson, which you say took place on the 15th December, 1862, that you heard the conversation about the same between Ruxton and Carver?

Ans. I don't know.

57 x int. Do you know was Mr. Carver in the city between the 15th and 25th December, 1862, and did you see him within that time?

Ans. He may have been. I don't remember having seen him.

58 x int. Did you see him between the 15th December, 1862, and 1st January, 1863? Answer yes or no.

(Objected to.)

Ans. I cannot say.

59 x int. Have you a recollection of having seen him between those dates?

Ans. None.

60 x int. You were asked by Mr. Le Moyne, in direct int. 5, was the sum of money to be paid by Ruxton to Johnson named, and if so, to state what it was, and you answer in these words: "It may have been named, but I don't know the amount." Why do you say it was $2,000 upon cross-exam'n if you do not know the amount?

(Objected to, on the ground that witness has not stated it was $2,000 that was paid to Johnson.)

236 Ans. Because Mr. Ruxton paid him $2,000.

61 x int. Why was it that Mr. Ruxton paid $2,000 to Johnson and not to Clapp for the deed?

Ans. Because Mr. Ruxton could get the deed by paying Mr. Johnson $2,000.

62 x int. Who owned the land before that deed was made therein described?

(Objected to by Mr. Le Moyne.)

Ans. I don't know.

63 x int. Why did not Mr. Johnson make a deed to Ruxton for that land, instead of Mr. Clapp, when Johnson got the money?

(Objected to by Mr. Le Moyne.)

Ans. I don't know.

64 x int. The only thing you know or can remember about the transaction is what you say Johnson said on the 15th December, 1862. Do you know or can you remember anything else?

Ans. It was not all done on the 15th.

65 x int. Can you remember anything else about the transaction?

Ans. No, sir.

66 x int. What were you doing on the 15th December, 1862, about the time this interview took place?

Ans. I was busy in the office.

67 x int. How did you come to pay so particular attention to what Johnson said, and why is it that you cannot state anything that anybody else said on that occasion?

237 Ans. Because Johnson spoke rather loud, so as to attract my attention.

Re-examined by Mr. Le Moyne.

9th direct int. Was the money paid to Johnson by Ruxton at the time of the interview between Clapp, Johnson, and Ruxton, or did Johnson come back to the office of Ruxton & Co. afterwards, on the same day, and get the money?

Ans. It was not paid at the first interview; Mr. Johnson came back and got the money.

JAS. F. OLCOTT.

Subscribed Dec. 18, 1863.

J. T. MOULTON.

And Eugene Long was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

1st int'y. What is your name, age, occupation, and place of residence?

Ans. My name is Eugene C. Long; my age 27 years; I am assistant treasurer to marine company; I reside in Chicago.

2d int'y. State how long you have been acting in your present capacity, and how you were engaged formerly.

238 Ans. I have been acting in my present capacity since the 1st of June last. I was receiving teller of the Marine Bank of Chicago, Marine and Fire Insurance Company, for about ten years.

3d int. State if you know William F. Johnson. And if so, how long have you known him?

Ans. I know him, and have known him since the year 1859 or 1860.

4th int. State if Johnson ever deposited any money with the Chicago Marine and Fire Insurance Company.

Ans. Not to my knowledge. He never had an account with that bank.

5th int. Look at check marked "Exhibit No. 17." State what you know in regard to that check having been paid by the Chicago Marine and Fire Insurance Company, and who paid to the said company.

Ans. Mr. Johnson was in the habit of going to Mr. Carver individually, and getting money on his checks, payable to Carver, of me as receiving teller. Those checks were, some of them, held on my cash, as said Johnson had no account with the bank, and some were charged in small balances on account kept on our books for convenience of those having no account with the bank and desiring only to make one deposit and one draft. I don't know

239 about this particular check. I found a check charged for the same amount of this check (Exhibit No. 17) about the time of the date of the check to W. F. Johnson in small balances aforesaid, and on examination I found a deposite made by Mr. Carver, to the credit of W. F. Johnson, in small balances, of the same amount as the said check, on the 22d day of December, 1860.

6th int'y. State with whom this deposite was made by Mr. Carver.

Ans. It was made with me as receiving teller, and a memorandum was made by me from whom the deposit was received. The memorandum was a deposite ticket made by me at that time, marked by the master Exhibit No. 20.

7th int'y. Did not Mr. Carver sometimes, when Johnson would come to him as you have stated above, give his own checks to Johnson or draw money on his own checks from you and give that to Johnson?

Ans. Not to my knowledge.

8 int. Did not Carver afterwards take up all of Johnson's checks which had been given to you as above stated?

Ans. I think he did, but I cannot state positively whether he did or not. I remembered his giving me a check for all my cash items some time in the year 1860. There were several thousand dollars he gave me a check for.

240 1st cross-int. You say, in answer to direct interrog'y 4th, that the complainant, Mr. Johnson, never deposited any money with the Chicago Marine and Fire Insurance Company. State whether he deposited any with the Marine Bank.

Ans. Not to my knowledge, as he had no account there.

2d cross-int. Please explain how it was and by whose direction you always paid Mr. Johnson checks upon the Marine Bank or the Marine and Fire Insurance Company.

Ans. By the direction of Mr. Carver.

3d cross-int. Look at draft marked Exhibit 13, and state if you know by whom the same was drawn, and whether, and if so, to whom, paid.

Ans. It purports to be drawn by W. F. Johnson—it is his signature—on the Marine Bank. I cannot state whether it was paid by the bank.

4th cross-int. If it had been paid by the bank, would it not have been cancelled in some way?

Ans. It would not, as he had no account with the bank.

5 cross-int. Look at "Exhibit 14" for the same amount, and state whether you ever saw it before, and whether and if so, to whom was it paid; and if you can explain what relation, if any, it has to Exhibit 13, please do so.

Ans. I never saw it before to my knowledge, it having been cancelled by the bank, and payable to W. F. Johnson. The supposition is it was paid to said Johnson. The draft marked Exhibit No. 13 I presume was given by Johnson for the check Exhibit No. 14, and said draft Exhibit No. 13 held by Carver as a voucher, or in lieu of a note taken from Johnson. This
241 I know nothing about, except from the appearance of the paper.

6th cross-int. What was the shape of the paying teller's cancelling hammer in 1860 in the Marine Bank or the Chicago Marine and Fire Insurance Company, and what sort of make or cancel did it make upon the papers cancelled by it?

Ans. It was a three-cornered cancelling hammer, and made a three-cornered cut on the check cancelled by it.

7th cross-int. Are the cancelling marks made by the hammer on Exhibit 14 and 15 such as you describe?

Ans. They are so.

8th cross-int. Look at Exhibit 16, and state whether the same was paid by the Chicago Marine and Fire Insurance Company.

Ans. This check apparently was cancelled by the receiving teller's cancelling hammer, which had 4 cuts, and was filled up by my assistant, George Taylor, and therefore must have been paid at the receiving teller's desk, or given to me for W. F. Johnson's checks held in my cash.

9th cross-int. Look again at Exhibit 17, and state what is the reason, if you know, that the word "dollars" and the words order "B. F. Carver" and "bearer" are cancelled or stricken out with a pen.

Ans. I don't know what the reasons are.

242 10th cross-int. Do you know whether in fact that check ever was paid to W. F. Johnson by the Chicago Marine and Fire Insurance Company?

Ans. It must have been paid, as it has been cancelled. There was a check charged to him about that time in small balances for the same amount, $1,015.

11th cross-int. Now, sir, if I understand you, there was an arrangement between Mr. Johnson, yourself as receiving teller of the Marine Bank and Fire Insurance Company, and B F. Carver as cashier thereof, whereby you paid all checks drawn on the Marine Bank or Marine and Fire Insurance Company by Mr. Johnson, and which checks Mr. Carver, under some arrangement with Mr. Johnson, paid and took up. Is such not the fact? and if I am mistaken, will you please state fully how this was.

Ans. I know of no such arrangement. I only paid Mr. Johnson's checks on receiving particular orders from Mr. Carver for each one paid by me.

12th cross-int. How and by whom were Mr. Johnson's checks on the Marine Bank and Marine and Fire Insurance Company taken up and paid?

Ans. Those that I held in my cash were taken up, I think, by Mr. Carver; and those that were charged in small balances, I do not know how they were taken up, only the one of $1,015, marked Exhibit 17, which I
243 suppose was taken up by Mr. Carver, December 22d, 1860, as a memorandum on the ticket marked Exhibit 20 would lead me to believe.

13th cross-int. How was it that Mr. Carver came to take those checks up?

Ans. I don't know. I know nothing of their trades. I only did as instructed in paying checks.

14th cross-int. Do you know whether at that time Mr. Carver was in the habit of doing, or did in fact do, a banking business outside of his business

as cashier of the Marine Bank and Chicago Marine and Fire Insurance Company? If so, state how you know the same.

Ans. I do not.

15th cross-int. Are you acquainted with the handwriting of Mr. Carver?

Ans. Yes, very well.

16th cross-int. Look at the book marked by the master Exhibit A, now shown you, and state in whose handwriting the account, credits and charges, therein is.

Ans. They are in the handwriting of Mr. Carver.

17th cross-int. Did you ever see that book before?

Ans. Never to my knowledge.

18th cross-int. Do you know whether Mr. Carver was in the habit of giving books of that kind, and doing a sort of general banking business on his own account in the year 1860?

244 Ans. No, sir, I do not. He used to do a little outside speculation, but I did not know he gave bank-books.

19th cross-int. Did you ever hear of his giving bank-books or doing a sort of general banking business like that mentioned in the bank-book shown you?

Ans. I never heard of it.

20th cross-int. Did you ever hear of his doing any outside business of that nature?

(Objected to by def't's solicitor.)

Ans. Not directly. I never heard of anything of this kind.

21st cross-int. Did you ever pay any of those checks drawn by Mr. Johnson, and to which you refer, during the absence of Mr. Carver? and if so, by whose direction?

Ans. No; I paid none only by the direction of Mr. Carver.

Re-examined by Mr. Le Moyne.

Int 9th. Look at Exhibit No. 10, and state whether that check was received by you as receiving teller, and whether or not the Chicago Marine and Fire Insurance Company received the money for it.

Ans. It must have been received by me as receiving teller or by the paying teller, as it has gone regularly through the course usual with checks received in the bank on deposit or otherwise. It is cancelled by Mr. F. G. Adams, upon whom it is drawn, and marked as having been received from the Marine Bank.

22d cross-int. Do you know positively, and will you so swear, that
245 this check marked Exhibit 10 ever passed through the Marine Bank or Chicago Marine and Fire Insurance Company, and was paid to either?

Ans. I would not say that I know positively, but I have very good reasons to believe that it did, as it has gone through the usual course, and if somebody had not received the money for it our cash account would not agree.

23d cross-int. How do you know it was ever in the Marine Bank or the Chicago Marine and Fire Insurance Company and used there as money?

Ans. Because it has Adams's mark on it of an "M" made by him on all checks received from the Marine Bank, and is cancelled by him.

24th cross-int. When you speak of Adams's mark "M" you refer to the "M" in pencil on the face of the check, do you not?

Ans. Yes, sir.

25 cross-int. Could not that "M" have been put there by somebody else? and might that check not look as it now does, except the writing by the master on it, without ever having gone through the Marine Bank, the Chicago Marine and Fire Insurance Company, or Mr. F. G. Adams's bank?

Ans. It is possible; but the mark "M" made on the check is familiar to me, and also the cancel on the check, which leads me to believe it went through the regular course of such checks.

246 26th cross-int. Might not Mr. Carver have run that check through the process you speak of and received the proceeds thereof himself?

Ans. Yes, that is possible.

EUGENE C. LONG.

Subscribed Dec. 18, 1863.

J. T. MOULTON.

And on the 21st day of Dec., 1863, Robert L. Fabien was by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

1 int. What is your name, age, and place of residence?

Ans. Robert L. Fabien; age 39; Lake Forest, Lake Co., Ill.

2 int. This is a suit wherein Wm. F. Johnson is compl't and Benj. F. Carver, Jas. Clapp, and Wm. Ruxton are def'ts. Do you know the parties or any of them? and if so, how long have you known them respectively?

Ans. I have known Mr. Carver for seven years; Mr. Ruxton, about the same time; Mr. Clapp, eight or nine years; Mr. Johnson, seventeen years.

3 int. Do you know in what business and where Wm. F. Johnson has been engaged for the past four years?

Ans. He has been engaged in business in Pike's Peak, (Denver City and its vicinity.)

247 State if you know when the compl't, Wm. F. Johnson, first went to Denver City from this place, and how you know the same, and when he returned therefrom.

Ans. He left Chicago about from the 18th to the 22nd of July, 1860. I know that I went with him to the cars. I know that two of my children died within ten or fifteen days of the time of his leaving, and I know further that Mr. Johnson was on my bond in a "trover" suit. He returned therefrom from the 20th of January to the 1st of February, 1861.

ROB'T L. FABIAN.

Subscribed Dec. 21, 1863.

J. T. MOULTON.

And James H. Rees was by me first duly cautioned to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

Int'y 1st. What is your name, age, occupation, and place of residence?

Ans. My name is James H. Rees; age, fifty years; occupation, land agent and real estate broker; residence, Lake View, Cook County.

248 Int'y 2nd. State how long you have resided in Cook County, and how long you have been engaged as real estate broker.

Ans. I have resided in Cook County upwards of 28 years. I have been in the business of real estate broker, as clerk or principal, upwards of 24 years.

Int. 3rd. Look at the description of the three pieces of real estate contained in the bill of complaint in this cause, wherein William F. Johnson is complainant and Benjamin F. Carver, James Clapp, and William Ruxton are defendants, and state what, in your opinion, said premises were worth in cash in the month of December, A. D. 1862, giving the valuation of each piece separately.

Ans. The northwest quarter of the northwest quarter of section one, (1,) township thirty-nine, (39,) range 13, was worth at that time in cash about fifty dollars per acre; the undivided half of the southwest quarter of section twenty-nine, same township and range, was worth in cash about thirty dollars per acre; the price of land in section twenty-seven, (27,) township thirty-nine, (39,) range fourteen, (14,) I should think was worth at that time in cash about twelve hundred dollars per acre.

Int'y 4th. How many acres would be contained in the description of the piece of land in the southeast quarter, section twenty-seven, (27,) provided the piece extended to the eastward only to the railroad?

(Objected to by Mr. McKinnon.)

249 Ans. I suppose it would be about four acres.

JAMES H. REES.

Subscribed Dec. 21, 1863.

J. T. MOULTON.

And Samuel H. Kerfoot was by me duly cautioned and sworn to testify the truth, the whole truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

1st int. State your name, age, residence, and occupation.

Ans. My name is Samuel H. Kerfoot; I am of lawful age; reside in Cook Co., Illinois; and my occupation is that of real estate broker.

2nd int. Do you know the complainant in this suit, William F. Johnson? If so, how long have you known him?

Ans. I do know him, and have known him for six or seven years.

3rd int. State whether or not said Johnson, in the month of November or December, 1862, gave you any authority to sell a certain parcel of land in section No. 27, town. 39 north, of range 14 east. If so, what authority? and at what price?

Ans. He did give the authority spoken of, in November, 1862. He
250 signed our usual form of authority in such cases to sell the five acres at five thousand dollars. The paper hereto attached, and marked by the master Exhibit No. 21, is a correct copy of the paper signed by said Johnson, the original of which we still retain.

(Mr. McKinnon says he is not now prepared to cross-examine witness, for the reason that his client, Mr. Johnson, is not present, and before Mr. McKinnon can proceed he must see his client and procure some documents, and also because Mr. McK. had no notice that Mr. Kerfoot would be called as a witness until called, but will be ready by afternoon of to-day.)

(Dec. 21st, p. m. Mr. McKinnon waives cross-examining this witness.)

SAM'L H. KERFOOT.

Subscribed before me.

J. T. MOULTON.

And William D. Tewksbury was by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon, upon examination, depose, testify, and say:

Int. 1st. State your name, age, residence, and occupation.

251 Ans. My name is William J. Tewkesbury; age, 19 years; residence, Chicago; occupation, student at law in the office of Merrick & McKinnon.

2d int. Were you present at the office of J. T. Moulton, esq., on the day of December, when James Clapp produced and gave the said Moulton or master in chancery certain deeds and other papers, marked by said master as Exhibit No. 1 in this cause? If so, state who was present at that time.

Ans. I was present at the time referred to, and believe that Mr. Clapp, Mr. McKinnon, Mr. LeMoyne, and the master were present during the time and Mr. Johnson for a part of the time.

3d int. State whether or not said Johnson looked, at the time referred to, at the book marked Exhibit A, and what remark the said Johnson then made, if any, in regard to the vouchers for the sum charged to him therein.

Ans. I cannot say whether that was the book he looked at or not. Do not remember what remarks he made; in fact, I did not hear him at the time.

WM. J. TEWKESBURY.

Subscribed Dec. 21, 1863.

J. T. MOULTON.

All which is respectfully submitted.

J. T. MOULTON, *Master in Chancery,*
U. S. cir. court, N. dist. of Illinois.

252 EXHIBIT 21.

In consideration of one dollar to paid by Messrs. S. H. Kerfoot & Co., hereby grant them exclusive authority to negotiate a sale for of the property below described for from date, and thereafter till withdrawn in writing on the face hereof, they to be allowed by commissions for such negotiation at the following rates: On all sales amounting to $3,000, 5 per cent.; on all sales over said amount, five [5] per cent. on the first $3,000, and two and a half [2½] per cent. on the excess; and if any sale negotiated by the said S. H. Kerfoot & Co. fail by reason of defective title, commissions shall be allowed as though the same had been consummated, and commissions shall also be allowed if avail after withdrawal of any negotiations had by S. H. Kerfoot & Co., before such withdrawal. Or should in any way fail to confirm a sale negotiated by them by virtue hereof, such commissions shall be allowed.

Description of property above referred to.

5 acres on south line of city, in sec. 27, 39, 14, lying east of Cottage Grove ave., and west of railroad track, for $5,000, payable $2,000 cash, bal. 1 and 2 years, 10 per cent., or cash.

(Signed) W. F. JOHNSON.
J. T. MOULTON.

Exhibit 21.
Between Nov. 14 and Dec. 2d, 1862.

254 On this day, to wit, the 18th day of March, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON
v.
BENJAMIN F. CARVER *et al.* } Chancery.

Now comes the parties, by their solicitors, and thereupon this cause is set down for hearing upon the pleadings and proofs on file herein. After progressing in the hearing of the cause until the hour of adjournment without concluding the same, the further hearing is postponed until to-morrow morning.

255 And afterwards, to wit, on the nineteenth day of March, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON *et al.*
v.
BENJAMIN F. CARVER *et al* } Chancery.

Now come again the parties, by their solicitors, and the court after hearing a part of the argument of counsel without concluding the same, the hour of adjournment having arrived, the further argument is postponed until next Monday morning.

And afterwards, to wit, on the twenty-first day of March, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON *et al.*
v.
BENJAMIN F. CARVER *et al.* } Chancery.

Now come again the parties, by their solicitors, and after progressing in the argument of said cause until the hour of adjournment having arrived without concluding the same, the further argument is postponed until to-morrow morning.

And afterwards, to wit, the twenty-second day of March, A. D, 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

256 WILLIAM F. JOHNSON *et al.*
v.
BENJAMIN F. CARVER *et al.* } Chancery.

Now come again the parties, by their solicitors, and the court having heard the conclusion of the arguments of counsel now takes time to consider of the same.

And afterwards, to wit, on the fifteenth day of April, A. D. 1864, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

WILLIAM F. JOHNSON AND THOMAS P. AKERS
vs.
BENJAMIN F. CARVER, JAMES CLAPP, AND WILLIAM RUXTON. } Chancery.

The court having fully considered, and being sufficiently advised upon the matters heretofore submitted herein, orders that the bill be dismissed without prejudice, at the complainants' costs, and that the defendants have and recover of the complainants their costs and charges by them about their defense in this behalf expended, amounting to the sum of dollars and cents, and that execution issue therefor. And the complainants pray an appeal to the Supreme Court of the United States, which is
257 granted upon entering into bond in the sum of one thousand dollars, to be approved by the court.

On this day, to wit, the twenty-second day of April, A. D. 1864, come the said complainants, by their solicitors, and filed in said clerk's office in said entitled cause their appeal bond, which is in the words and figures following, to wit:

Know all men by these presents that we, Thomas P. Akers, of New York City, as principal, and William S. Johnson, of Chicago, Cook County, Illinois, as surety, are held and firmly bound unto Benjamin F. Carver, James Clapp, and William Ruxton, of the said county and State, in the penal sum of one thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our

heirs, executors, and administrators, jointly, severally and firmly by these presents.

Witness our hands and seals this 22d day of April, A. D. 1864.

The condition of this obligation is such that whereas the above-bounden Thomas P. Akers and William F. Johnson, hereinafter named, has prayed for and obtained an appeal to the Supreme Court of the United
258 States from the order or decree of the circuit court of the United States for the eighth circuit and northern district of Illinois, made on the 15th day of April, A. D. 1864, dismissing the bill of complaint of said William F. Johnson, heretofore filed in said court, against said Benjamin F. Carver, James Clapp, and William Ruxton, for the purpose of setting aside and rescinding certain conveyances of real estate in said bill mentioned and described, and for other relief; and in a portion of which said real estate, the above-bounden Thomas P. Akers, after the filing of said bill, became the owner by purchase, and was made a party complainant to said suit:

Now, therefore, if the said Thomas P. Akers, shall duly prosecute his said appeal with effect, and, moreover, pay the amount of costs and damages that may be adjudged against him in case the said order or decree shall be affirmed in said Supreme Court, then the above obligation to be void; otherwise, to remain in full force and virtue.

THOMAS P. AKERS, [SEAL.]
By J. McKINNON, *his Attorney in fact.*
WM. S. JOHNSTON, JR. [SEAL.]

Taken and entered into before me this 22d day of April, A. D. 1864.

259 Know all men by these presents that I, Thomas P. Akers, of the city of New York, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint, John J. McKinnon, of the city of Chicago, and State of Illinois, my true and lawful attorney in fact, for the purpose of executing in my name and stead, as such attorney in fact, such an appeal bond as has been or may be required in the chancery suit of William F. Johnson and Thomas P. Akers against Benjamin F. Carver, James Clapp, and William Ruxton, in the circuit court of the United States for the northern district of Illinois, at Chicago, in which said suit a decision has been made adverse to the claims of the said Johnson and Akers, so that the said cause may be removed by appeal into the Supreme Court of the United States; and I hereby engage that I will ratify and confirm whatsoever acts shall be done in the premises by my said attorney in fact pursuant to the authority delegated to him by this instrument, so that the same shall be as valid and binding upon me as if the same were my own personal acts.

Given under my hand and seal this 20th day of April, A. D. 1864.

THOS. P. AKERS. [SEAL.]

Witness: EUGENE SMITH.
[$1 stamp.]

STATE OF NEW YORK, *City and County of New York, ss:*

260 On this 20th day of April, 1864, personally appeared before me, a notary public in and for said city, county, and State of New York, duly commissioned and sworn, dwelling in the city of New York, the within-named Thomas P. Akers, to me known to be the individual described in and who executed the foregoing power of attorney, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal this 20th day of April, 1864, at the city of New York.

[SEAL.] EUGENE SMITH,
Notary Public in New York City.

Approved. THOMAS DRUMMOND.

Endorsed: Filed April 22d, 1864.

WM. H. BRADLEY, *Clk.*

261 The following is a copy of the check referred in the amendment made March 11th, 1864, to the original bill of complaint herein.

Check.

$2,000. CHICAGO, *Dec. 9th*, 1862.

Ten days after date pay to the order of W. F. Johnson two thousand dollars, value received, and charge the same to account of—

B. F. CARVER.

To WM. RUXTON & Co., *Chicago, Ill's.*

262 The following are the letters referred to in the testimony in this case:

DENVER, *July* 14, 1861.

SIR: The package alluded to contained fifteen hundred dol's, of which you will probably be advised before this comes to hand. It was followed a few days after by another shipment of three thousand, which may have taken the same direction. It was remitted Mr. Byram, with discretion to invest in flour or forward to you to my credit. Whether my present expedition is to be much prolonged will be determined by the course this remittance takes. If it goes forward to you, you will be advised before.

Truly,

W. F. JOHNSON.

NEBRASKA CITY, *July* 23, '61.

MAJOR: Yours of the 15 received this evening, and I am truly sorry that I did not, in my former letter, explain why I did not receive your remittances for reinvestment, which I shall now attend to do. When we made
263 our contract with the C. O. C. P. P. for the transportation of the freight we were to have a large am't of it early in the season, in June, which would give us time to make return loads. We waited to 10 July with but little freight, when their president agreed to increase the price if we would use our 3 old trains, the trains used in the freight of flour to Denver, which we agreed to do, your letters greatly discouraging us of a favorable freight from flour at Denver, and this was a sure return for services I have sent all your money forward, as I could not think of using it in any other way than in the flour trade. I would have you understand, my dear friend, that I have found no fault to you, and would be glad to always meet with such friends as yourself. You know this. I have been too long by you for you to think otherwise. You know my position at St. Joseph and St. Louis and at Denver, where we had conversations on transportation. If I fail to get the freight, as promised, by the express, I may have to buy
264 flour. Should I need help I shall call on you in preference to any man. I hope you will come by Nebraska on your way home, when we may have a talk, and when we are face to face all will be right.

Very truly,

A. BYRAM.

DENVER, *Aug.* 16, 1861.

B. F. CARVER, Esq.: Under date of 3 inst. I have advices from my son that you have not received the gold, as p'r enclosed receipt. If when this comes to hand you should still not have received it, please advise A. & P. Byram, of Nebraska City, who will see the bank at once, through whose hands it passed, under a general arrangement with them for all remittances. I shall send a thousand more on the first day of S'pt. next. The residue I shall retain until I come home, as I am making good and profitable use of every dollar I have. You will discover by the dates of these re'pts that I have not used any of this money after its receipt for sales of flour, nor have
265 I used the thousand of which I spoke. I was afraid to do so, things were so uncertain on the river and on the plains. Besides, what I have now is as much as I would risk using these times, and am making 10 p'r c. month, in advance, on staple merchandise, with a margin of four to one. I enclose to you my brother's letter from San Francisco. I have told him to prospect and prove up thoroughly his claim, and that I will be at San Francisco on the first day of April next. It is now too late to get his mule up this season. I raised my brother. In point of intelligence and integrity he is beyond all doubt and question. The only possible question is what doubts may be thrown upon full and complete investigation. I shall blow out ten mule loads of this ore and take it to San Francisco and work it myself before I act. This brother came to the placers in 1850, under Collier's escort of dragoons, and has prospected from Oregon to the Isthmus.
265*a* You shall have such proportion as you want without risk, or burden, or expense to you. But of this after I have explored at my own expense and risk. My convictions are perfect, so far as my brother's has tested. They can only be doubted after I have prospected and found them not confirmed. Will you do me the favor to send a messenger to my wife with my brother's letter. Truly,

JOHNSON.

DENVER, *S'pt.* 20, '61.

SIR: I enclose another letter from Mr. A. Byram. I have instructed him to remit you $2,000 of the $5,000 government drafts which he has in hand of mine. Will you, my dear sir, say to me if Mrs. J. can check on you for such sums as she needs? There may be difficulty in mail remittances hereafter. I have as much money here as I think prudent to use here without retaining any portion of that borrowed from you; besides, in these
266 times, I fear an indebtedness, for when wanted I might not have it. I think it would be folly in the extreme to throw away the hand I am holding till "played out." The show is rich, I assure you.

Your ob't servant,

W. F. JOHNSON.

B. F. CARVER, Esq., *Chicago.*

NEBRASKA CITY, *Sept.* 10, 1861.

MAJOR: Yours of 30 Aug. received. I would willingly take your proposition for a return of flour trains if I was in a position to do so, as your views in that letter meet my own, in relation to price of flour, though yours and Mr. Windsor's former letter greatly discouraged me in sending forward again; our situation at this time will not admit of extending business, as all of our trains are employed for express co., and all the money we can get will be required to discharge our obligations; then, beside, the entire country here is in commotion, and I feel alarmed for our present safety. St. Jo., as

well as the railroad, is in the hands of rebels, and all business is
267 stopped between here and St. Louis. Revolution is on the increase,
and many of our citizens here feel alarmed, as reports are afloat that Missourians are coming here. We are held in readiness to carry freight for the mail co., but fear they will not be able to get through at St. Jos., as the boat is not allowed to leave there for the river above, and we cannot tell when we we will be robbed of what we have, as murderers and thieves are prowling the country in all directions. Add to this the state of the currency. When we have money on hand we cannot tell when the banks, at least Missouri, will be worthless. So, I believe, if we can stand still and pay off for the present, we will do the best thing for us. We would gladly take your offer, if we had no fears of some mishap that may lose the whole. I would say to you, keep your money, then, until you go home, as the dangers of sending are large. I have heard from the $1,500 on N. Y. to Mr. Carver's credit; the 3,000, I have written three times to Mr. Carver; have no answer; have
notified the express will hear soon; I believe all will be right. I hold
268 the receipt of American Express for the same. I hope you will come
by this place on your way home. I am unable to say what we will do for a few days, but will let you know if we do anything to Pike's Peak.

A. BYRAM.

DENVER, *Sept.* 9, 1861.

SIR: Enclosed please find draft of Gov. Gilpin on U. S. treasury for thirteen hundred ten (1,310) dollars. I have this day also sent to A. & T. Byram five thousand dollars of the same for flour. There are not five thousand bags in this whole Territory. If he does not use it I have ordered him to ship corn to me by express. I have not used any portion of the money borrowed of you, including this, since realized from sales in June. The residue I shall send soon after the 1st proximo. Your not answering my solicitation for this permission I construe into your approbation. At any rate, I shall hope to average all within the time, or very nearly.

Your ob't servant,

W. F. JOHNSON.

269 DENVER, *Oct.* 11, 1859.

B. F. Carver, Esq., Chicago:

SIR: The succeeding mail, to which the enclosed is an answer, will have taken an order to Mr. Byram to place you in possession of $2,000, say two thousand dollars, in coin. These bills have been protested. I took them instead of gold dust. First, to save risk and delay in placing you in funds. Secondly, to save 12 p'r c. in remittance and coinage. I called on the governor in relation thereto; he showed me a private (unofficial) letter from M. Chase, pointing out the informality and instructing him how to form his vouchers; and this has been complied with and a special messenger (the p. master) dispatched in yesterday's coach, with the vouchers and explanations complete to conform with instructions. The governor gave me the most unequivocal assurances that all this will be remedied in the "smallest appreciable time." The payment of these bills or non-payment will involve the maintenance or surrender of all the "free territory." This point in the hands
of the South, and the Pacific is separated from the Atlantic, and the
270 integrity of the North gone. I guess, therefore, it will all come right.
I have also four or five thousand dol's out at from 7 to 9 p'r c. per month, 10-26.

Yours,

W. F. JOHNSON.

DENVER, 16 *Oct.*, 1861.

SIR: I have just returned from an interview with the governor. He has advices from the President, from Chase, and from Cameron. The whole machinery will run smoothly so soon as the forms of the "circumlocution office" can be complied with, which has been done. I apprehend these drafts will have to be changed so that they can be classified with the vouchers, returnable to the quartermaster gen., paymaster gen'l, and commissary gen'l, tho' the governor did not tell me so. I therefore beg you to send the draft of $1,310 to me at once, and if Mr. Byram had furnished you any please remit them to me also. I have written to him by this mail to this same purport.

271 I should remit you the gold, but unfortunately my contract is not to demand the principal so long as the interest is paid, (from 7 to 10 per c. monthly in advance,) which has been done and is being done. But these drafts will, I apprehend, be punctually paid. They cannot raise one dollar here until it is done, and would involve the loss of three-fourths of the continent.

Truly, W. F. JOHNSON.

DENVER, 17 *Oct.*, '61.

SIR: Yours of the 9 inst. this day to hand. An evening or two ago some eight or ten of the largest government billholders called on Gov. Gilpin to learn the cause and all the particulars of the protest of his bills. He then opened to them all his official and private letters from the President and members of the Treasury and War Department. The result of this interview was their complete and perfect satisfaction that all is right, lawful, and that these protests were in consequence of technical and clerical informalities, which are remedied, and a special messenger dispatched with

272 vouchers in form. I have written Mr. Byram to send the bills forwarded him back to me, as you will please do with the one in your hands. I expect that the governor will issue others in their place.

Truly, your ob't serv't,

W. F. JOHNSON.

B. F. CARVER, Esq., *Chicago.*

DENVER, 7 *Dec'b*, 1861.

GENTLEMEN: You will discover by the enclosed slip that Capt. Ally, expected daily for two months, is now on the ground. Last evening he assured me that he expected to get his business so far systematized and assorted, as to pay most if not all my bills next week. It is truly vexing that you should have this fund so inopportunely delayed. It has kept me here from my family the past three months. I could as well have had gold dust at the time, but the currency costs 12 per ct. loss, besides delay of time, which I hoped to avoid. There remains now no obstacle save fixing affairs to suit a rule of tape and twine.

273 Truly, W. F. JOHNSON.

DENVER, *D'mb.* 6, 1861.

GENTLEMEN: As Capt. Alley promised a week ago, he has this day given me his draft on Ass. Sec'y. U. S. I have seen his orders from the Adjutant Gen'l U. S. to pay these bills. No doubt you will find the cash on hand ready. I regret this delay, although my delay here is paying daily; still I am vexed that the funds should have delayed a single day. I trust Mr. Carver will hold all my securities in his hands till my return, which I think will be soon. In the mean time I beg the particular favor to pay Mrs. J.'s small checks

until my return. It is inconvenient to send small sums of bullion, and by the first proximo I hope to see you in person, and make my acknowledgments.

Resp., W. F. JOHNSON.

Messrs. B. F. CARVER & Co., *Chicago.*

274 DENVER, *Ap'l* 11, 1862.

GENTLEMEN: Yours of 27th ultimo is to hand. I have several thousand dollars "audited accounts" of the U. S. government. Capt. Ally, detailed for this purpose, is waiting a response to his requisition on the department for money or instructions to draw directly upon the Sec. of Treasury for their liquidation under the new law. This is expected in a very short time, when I will place you instantly in funds, and very much obliged to you. As your request is not of a peremptory character, I presume this short delay will not be objected to, but if mistaken, will act more promptly on the instructions.

If Mr. C. has a young man whom he could send upon such an expedition in this far-off wilderness, there is a better field of action here for a small sum of money, say five or ten thousand dollars, than at any point on the globe. I will send him gratis all the knowledge I have. I am compounding at 10 and 20 pr ct. monthly every dollar I have, and have not had an idle dollar since I came here. For instance, I hold an "audited ac-
275 count" for five thousand dollars, on which I have advanced $1, 300, and have paid in gold 10 per ct. interest the first day of the month since the 1st of January, and other securities just as good; on some of which I get 12½, others 15, and some 20 per ct.

Truly, W. F. JOHNSON.

I have not had a dollar interest default when due since I came here. I have received one thousand dollars interest on nine hundred lent in July last, and the loan still continues, the interest monthly in advance. The last was $116, the first of this month, in advance for April. Such is a gold mining country, incredible as it is.

J.

DENVER, 7 *May*, 1862.

GENTLEMEN: Yours of 25 ultimo is this day to hand. You find of this date express rec'pt for the sum named as estimated here at $16 pr oz., of some coins $19, some $14, so that it is only possible to approximate the am't. You had better send it to the assay office in N. Y. to save time, on the
276 first of the coming month. I shall remit to Mrs. J., and request her to call and pay you any difference that shall have been found to exist after coining. I am exceedingly obliged for your courteous attention to Mrs. J. I regard it more as a personal than business affair. If, however, you will have the goodness to hand Mrs. J. a hundred dollars of this, she will pay you in full immediately after the first of next month. It is exceedingly difficult, indeed impossible, to remit exact sums. I would not touch the bill-drawer's checks for a moment, and the government here are waiting yet for instructions official, to check for funds, which, the paymaster, quartermaster and commissary are privately advised, is absolutely to their credit, and of whose certificate and audited accounts I am full. Every dollar I have is compounding at from ten to fifteen per c. monthly.

Very truly, W. F. JOHNSON.

B. F. CARVER, *Chicago.*

I beg Mr. C. to hold all my papers intact till I see him. In case of
276*a* casualty to me, he will arrange the whole thing as Mrs. J. may wish.
I don't want administrators ever to touch a dollar of my property.
This is confidential.

J.

277 Endorsed: Filed March 9, 1864.

WM. H. BRADLEY, *Clk.*

The following certificate of purchase was offered on the hearing by the defendants' counsel, to which the complainant's counsel objected, to wit:

Certificate of purchase, sheriff to Thomas Greer.

STATE OF ILLINOIS, *County of Cook, ss:*

I, Anthony C. Hessing, sheriff of Cook County, do hereby certify that by virtue of a certain writ of execution to me directed from the superior court of Chicago in favor of Thomas Greer, plaintiff, against William F. Johnson, a defendant, for thirteen hundred thirty-five dollars and seventy-nine cents,
and costs, dated the eleventh day of April eighteen hundred and
278 sixty-one, I did on this twenty-first day of August eighteen hundred and sixty-one, at 10 o'clock in the forenoon, at the north door of the court-house, in Chicago, in the said county, (the time and place aforesaid having been duly advertised according to law,) sell at public vendue the following described parcel of land, to wit: The undivided half of the northwest quarter of section twenty-nine, (29,) township thirty-nine, (39) north, of range thirteen (13) east of the third P. M., for eighteen hundred dollars, to Thomas Greer; also, lot ten (10) of W. F. Johnson's subdivision of part of the southeast quarter of section twenty-seven, (27,) town. thirty-nine, (39,) range fourteen (14,) east of the third principal meridian, in Cook County, Illinois, for fifty dollars, to Thomas Greer, said sums amounting to the sum of eight hundred and fifty dollars, said sums being the highest and best bids offered for said parcels of land. And the purchaser will be entitled to a
deed for the premises so sold on the twenty-first day of November,
279 eighteen hundred and sixty-two, unless the same shall be redeemed as provided by law.

A. C. HESSING, *Sheriff*,
By T. M. BRADLY, *Deputy.*

No. 47155. Filed Aug. 23, 1861.

STATE OF ILLINOIS, *County of Cook, ss:*

I, William L. Church, clerk of the circuit court and ex officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of a certain instrument filed in my office on the twenty-third day of August, A. D. 1861, and recorded in book No. four of certificates, on page 14, the parties to the same being sheriff of Cook County of the first part and Thomas Greer of the second part.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at Chicago this 11 day of Jan'y, A. D. 1864.

[SEAL.] WM. L. CHURCH,

Clerk of the Circuit Court and ex officio Recorder of Cook County.

[Rev. stamp cancelled.]

280 NORTHERN DISTRICT OF ILLINOIS:

I, William H. Bradley, clerk of the circuit court of the United

States for the northern district of Illinois, do hereby certify that the foregoing is a true and complete transcript of the record and all the proceedings had in the cause wherein William F. Johnson *et al.* are the complainants and Benjamin F. Carver *et al.* are the defendants, as the same appears from the records of said court now in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this twenty-second day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of our independence the eighty-ninth year.

WILLIAM H. BRADLEY, *Clerk.*

Filed December 3, 1864.

1783